TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 134

THE UNITED STATES, PETITIONER

vs.

LOUIS TOWNSLEY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JUNE 6, 1944
CERTIORARI GRANTED OCTOBER 9, 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1086

THE UNITED STATES, PETITIONER

vs.

LOUIS TOWNSLEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Record from Court of Claims	1	1
Petition	1	1
General traverse	5	2
Argument and submission of case	5	2
Proceedings after argument and submission of case on merits	5	3
Argument and submission of case on defendant's motion for a new trial	7	3
Order overruling defendant's motion for new trial; withdrawing former findings, judgment and opinion, and filing new findings, judgment for plaintiff and opinion	7	3
Special findings of fact	9	4
Conclusion of law	20	13
Opinion, Madden, J	21	14
Dissenting opinion, Whitaker, J	36	27
Judgment	39	29
Proceedings after judgment	39	29
Clerk's certificate [omitted in printing]	41	29
Stipulation of facts	42	30
Exhibit A—Executive Order No. 1888, "Providing conditions of employment for the permanent force for the Panama Canal"	50	36
Exhibit B—Executive Order No. 2514, "Relating to conditions of employment in the Panama Canal Service"	55	43
Exhibit C—Official records and documents of the Panama Canal	58	46
Exhibit D—Excerpts from Panama Canal personnel regulations	95	79

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1 In the Court of Claims

No. 45097

LOUIS TOWNSLEY

v.

THE UNITED STATES

Petition

Filed March 14, 1940

To the Honorable the Court of Claims:

The plaintiff, Louis Townsley, respectfully represents:

I. He was during all the times hereinafter mentioned a citizen of the United States and a resident of the Panama Canal Zone.

II. He was employed by the Panama Canal at the monthly rates of pay, in the occupations and during the periods of time as follows:

Occupations	Rate of pay	Periods of time
Operator (Dredge)	$306	3/28/34 to 1/ 6/37
Chief Operator (Dredge)	311	1/ 7/37 to 11 30/37
Master (Dredge)	336	12/ 1/37 to 8//31/39

2 III. Plaintiff held the position hereinbefore enumerated by virtue of an appointment by the Governor of the Panama Canal and the compensation for such position was determined by a wage fixing authority consisting of the Governor of the Panama Canal acting with the assistance of a wage board appointed by the Governor, under the authority conferred upon him by the Act of August 24, 1912, 37 Stat. 561, and the Executive Order of February 2, 1914, issued pursuant to the said Act.

IV. Since March 28, 1934, plaintiff, has been required to and has performed work for a period in excess of the regular working week of not to exceed 40 hours per week, but has not received pay for any of the time in excess of 40 hours per week, he therefore claims pay for the overtime work in excess of 40 hours per week performed by him at the rate of time and one-half, amounting to approximately $5,800.00, but subject to exact computation by the Panam Canal.

V. Claim is made under and is based upon the following, among other provisions of statute:

Section 23 of the Act of March 28, 1934, 48 Stat. 522 (Canal Zone Code, Title 2, § 81, as amended by the Act of July 9, 1937, 50 Stat. 486–7) providing for a regular working week not to exceed 40 hours per week, and further providing that where employees are required to work in excess of 40 hours per week they shall be paid compensation for such overtime at the rate of time and one-half.

VI. The Comptroller General of the United States has ruled that those employees coming within the terms of the Act of March 28, 1934, whose compensation is fixed on a monthly or annual basis are not entitled to the benefit of the provision therein for overtime pay.

3 VII. No other action has been had on said claim in Congress or by any of the departments; no person other than the plaintiff is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein has been made; the plaintiff is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the plaintiff has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The plaintiff is a citizen of the United States. And the plaintiff claims $5,809.

KING & KING,
Attorneys for Plaintiff.

[*Duly sworn to by George R. Shields; jurat omitted in printing.*]

5 *General traverse*

Filed April 23, 1943

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

FRANCIS M. SHEA,
ETF. *Assistant Attorney General.*

Argument and submission of case on merits

On June 9, 1943, argument of case on merits begun by Mr. Fred W. Shields for plaintiff, and by Mr. Wilbur R. Lester for defendant.

On June 10, 1943, argument concluded and case submitted on merits by Mr. Fred W. Shields for plaintiff, and by Mr. Wilbur R. Lester for defendant.

Proceedings after argument and submission of case on merits

On October 4, 1943, the court filed findings of fact and conclusion of law, with judgment for plaintiff in the sum of $5,157.57. Opinion by Madden, J.

On November 23, 1943, the defendant filed a motion for an extension of time within which to file a motion for a new trial to January 5, 1944.

On November 30, 1943, the court entered the following order on said motion:

7

ORDER

IT IS ORDERED this 30th day of November 1943, time for filing of defendant's motion for a new trial is extended to December 20, 1943, and said motion is directed to be placed on the law calendar for oral argument on Monday, January 3, 1944.

Argument and submission on defendant's motion for a new trial

On January 3, 1944, the defendant's motion for a new trial was argued and submitted by Mr. Assistant Attorney General Francis M. Shea for defendant, and by Mr. Herman J. Galloway for plaintiff.

Order overruling defendant's motion for a new trial; withdrawing former findings, judgment and opinion, and filing new findings, judgment for plaintiff and opinion

March 6, 1944

ORDER

This cause comes before the court on defendant's motion for a new trial, and on consideration thereof

It is ordered this 6th day of March 1944, that said motion be and the same is overruled.

It is further ordered, on the court's own motion, that the special findings of fact, conclusion of law, and opinion filed herein October 4, 1943, be and the same are vacated and withdrawn, and new special findings of fact, conclusion of law entering judgment for plaintiff in the sum of $5,157.57, with an opinion by Judge Madden, be and the same are now filed in lieu thereof.

By the Court.

RICHARD S. WHALEY,
Chief Justice.

9 *Special findings of fact, conclusion of law and opinion of the court by Madden, J., Dissenting opinion by Whitaker, J.*

Filed March 6, 1944

Mr. Fred W. Shields for the plaintiff. Messrs. Harvey C. Long and Harry D. Ruddiman and King & King were on the briefs.

Mr. Wilbur R. Lester, with whom was Mr. Assistant Attorney General Francis M. Shea, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

Special findings of fact

1. Plaintiff is a citizen of the United States, and was employed by the Panama Canal, on a monthly basis in various capacities from December 18, 1909, to August 31, 1939, when he retired.

2. Plaintiff brings this action to recover for overtime, for the period March 28, 1934, to August 31, 1939, computing the time on a 40-hour week basis, under the provisions of Section 23 of the act of March 28, 1934, 48 Stat. 522, which reads as follows:

"SECTION 23. The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-
10 time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half."

3. The general conditions of employment for employees of the Panama Canal were fixed by Executive Order No. 1888, promulgated by the President on February 2, 1914, as amended by executive Order No. 2517 promulgated by the President January 15, 1917, which executive orders are in evidence as part of stipulation exhibits A and B, respectively, and are made part hereof by reference.

These orders included the following provisions:

"1.-The salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in Continental United States, as determined by the Governor of the Panama Canal.

"8. All appointments shall be made by the Governor of the Panama Canal, or by his authority, except the district judge, district attorney, marshal, clerk of district court, and his assistant.

"11. Employees whose salaries are fixed on a monthly or annual basis will receive no pay for overtime work.

"12. Employees above the grade of laborer, appointed with rates of pay per hour or per day, will not be employed over eight hours in any one calendar day, except in case of emergency. The time such employees work over eight hours in one calendar day, and time worked on Sundays and regularly authorized holidays, including January 1st, February 22nd, May 30th, July 4th, Labor Day, Thanksgiving Day, and December 25th, shall be considered overtime for which time and one-half will be allowed. Such employees who work on the days prior and subsequent to the holidays specifically named above will be allowed their regular pay for eight hours for such days, in addition to pay for any work performed.

"20. All employees who are citizens of the United States, and aliens whose compensation is more than $75 per month or 40¢ per hour, shall be entitled to leave privileges.

"21. Leave will be divided into three classes, viz: (1) annual leave, (2) cumulative leave, and (3) travel leave.

"26. In cases of hourly and per diem employees annual
11 leave on account of sickness or injury shall be based upon a day of eight hours.

"29. Thirty days' cumulative leave will be allowed each employee paid on a monthly or annual basis for each year of his service, and twenty days to each employee paid on an hourly basis. This leave will be due after completing ten months' service each year and may be taken when the employee's service can be spared. It may taken anually or left to accumulate to the credit of the employee, provided, however, that the maximum number of days' leave with pay of all kinds which may be granted at any one time or which may be commuted into a cash payment at termination of service is 120.

"42. Office hours and hours of labor will be fixed by the Governor within the limits prescribed by law."

4. During the period from March 28, 1934, to January 6, 1937, plaintiff was employed by the Panama Canal as operator or leverman aboard the dredge *Las Cruces*, at a monthly salary of $306; from January 7, 1937, to November 30, 1937, he was employed as chief operator aboard the same dredge, at a monthly salary of $311; and from December 1, 1937, to August 31, 1939, he was employed as master of the same dredge at a monthly salary of $336. The salary so paid the plaintiff was in accordance with the

rates fixed by the Governor of the Panama Canal for the positions held by plaintiff.

5. The dredge *Las Cruces* was a diesel electric hydraulic pipe line dredge, with a twenty-four inch discharge pipe, 224 feet in length, 50 feet beam, drawing 14 feet of water, displacing 2,500 tons, with a main power plant of four 911 H. P. diesel engines, each of which was connected to a 550-K. W., 270-volt main generator, and a 220-K. W., 120-volt auxiliary generator.

6. During the period from March 28, 1934, to August 31, 1939, it regularly operated on a schedule of 24 hours each day, except Sunday, divided into three eight-hour shifts, and was engaged principally in maintaining canal channels and terminal harbors. Occasionally it operated on Sundays, especially when engaged on important work which had to be completed as quickly as possible. Repairs and replacements of the machinery and equipment were usually made on Sundays to avoid loss of dredging time during the week. Such repairs and replacements were scheduled by the master of the dredge, and he made arrangements for the force of men required to perform the work, and was usually present to supervise the work, which was normally completed during the day watch on Sundays.

7. The master of the dredge was in charge of all operations of the dredge, including disposition of spoil, supervision of fills, construction of temporary spillways, and other control works directly connected with the operation of such equipment. He was required to have a license as Master, Pipe Line Suction Dredge, issued by the Board of Local Inspectors of the Panama Canal. He operated the dredge when required to do so, was either aboard or in the vicinity of the work being done eight hours each day, and was available for emergency calls at all hours.

8. During his employment as master of the dredge *Las Cruces*, from December 1, 1937, to August 31, 1939, plaintiff's normal duties required his presence on the dredge or on related work away from the dredge, 8 hours per day, 6 days per week, usually working from 7 a. m. to 3 p. m. He was subject to call for duty at any hour of the day or night in case of a major break-down of the equipment or any other unusual circumstances.

9. Compensatory time off was granted in accordance with the regulations issued by the Governor of the Panama Canal. As a rule definite schedules for relief were prepared in advance. Overtime required was arranged orally by the master to suit the exigencies of the work. The master usually fixed his own overtime requirements. However, in some instances he could be specifically instructed by his supervisor to handle some work at such a time that overtime on his part would be required. He might

also receive notice of emergencies requiring special duty outside of regular working hours, from his subordinates, or through his supervisor.

Panama Canal Personnel Regulations, Paragraphs 48.2 and 48.3 were as follows:

"48.2. Recuperative time for monthly employees working irregular hours.—In case a monthly employee, regularly employed in the daytime, works at night, he may be allowed time off
13 the following day if needed for rest or recuperation without having time charged against his leave.

"48.3. Relief time for Sunday or holiday work.—A monthly employee who works regularly and is required to work on a Sunday or holiday may be granted relief time for such service by the head of his department or division when it is practicable to do so without detriment to the work or incurring additional expense, but the granting of such time is not a vested right. When such time is allowed to an employee whose rate of pay is computed on a 28-day month, it shall be granted on a basis of 28 days' service each month except that during the month of February he may be granted two days off. This does not apply to employees engaged on certain classes of work for which special rules for allowing relief time have been approved by the Governor."

Masters ordinarily did not take advantage of the relief afforded by Paragraph 48.2, and they reported for work the following day if able to do so. If the plaintiff, as master, wished to leave his work for personal reasons part of a day, there ordinarily would have been no objection.

10. The chief operator stood a regular 8-hour watch as operator (leverman), and was acting master during the absence of the master, which absences averaged about two months a year. He was in charge of and responsible for all equipment aboard the dredge when the master was not aboard. He was required to hold a license as Master, Pipe Line Suction Dredge.

While employed as chief operator, dredge *Las Cruces*, from January 7, 1937, to November 30, 1937, plaintiff was required to stand a regular 8-hour watch as operator, 6 days each week. Such work as plaintiff performed outside his regular working hours or on Sundays and holidays was compensated for as provided by Paragraphs 48.2 and 48.3, Panama Canal Personnel Regulations, as above quoted. Plaintiff customarily worked on day shifts, but on occasion performed work on night shifts. As chief operator he was a representative of the master during his absences from the dredge, and he also served as acting master during the master's absences on leave.

11. An operator of a dredge stood a regular 8-hour watch as operator (leverman), 6 days a week, and was in charge of

14 and responsible for all equipment at all times when the master and chief operator were not aboard. He was required to hold a license as Master, Pipe Line Suction Dredge. He was in charge of the dredge during his watch, and directed the activities of pipe line foremen and deckhands.

While employed as operator on the dredge *Las Cruces*, from March 28, 1934, to January 6, 1937, plaintiff was required to stand a regular 8-hour watch on the basis of a 48-hour week. Such work as plaintiff performed outside his regular working hours or on Sundays and holidays, was compensated for as provided by Paragraphs 48.2 and 48.3, Panama Canal Personnel Regulations, quoted in finding 9.

12. April 9, 1919, the Governor of the Panama Canal created a Board on Rates of Pay—Gold Roll, by a written communication, reading in part as follows:

"THE PANAMA CANAL, EXECUTIVE OFFICE,
"*Balboa Heights, C. Z., March 31, 1919.*

"*To all concerned:* * * *

"You are hereby appointed as a board to advise me on wages for The Panama Canal and Panama Railroad employees on the gold roll who are members of the American Federation of Labor.

"(1) The Board is an advisory one to recommend rates of pay to the Governor and is without authority to make promises except as to its recommendations.

"(2) This Board will recommend wages for positions filled in whole or part by employees who are members of the American Federation of Labor.

"3) Rates will generally be equal to States' rates plus 25 percent for similar positions in the Government service in continental United States. If there are no similar Government positions, Canal rates may be based on nongovernment ones, plus 25 percent; provided, however, such rates properly coordinate with similar or related ones in the Canal service which have been established directly on Government ones.

"(4) The Board will not make recommendations for individuals but for positions."

The foregoing, together with other documents from which quotations are made in this report, are in evidence as exhibits to the stipulation of plaintiff and defendant and are made a part hereof by reference.

15 13. May 21, 1927, the Governor of the Panama Canal issued an announcement covering a change in the name of

the Board on Rates of Pay—Gold Roll to the "Wage Board," which provided in part as follows:

"BALBOA HEIGHTS, C. Z.,
"*May 21, 1927.*

* * * * *

"4. Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board.

"5. Employees who desire wage adjustments should first take up the matter with their official supervisors in their department or division. If a satisfactory adjustment is not secured they should forward their claims to the Governor, requesting submission to the Wage Board. Such claims may be forwarded either directly to the Governor or through labor organizations.

"6. Claims for changes in rates of pay should be accompanied in each instance by a written statement of the rate desired and the arguments which are considered to justify it, together with such data as the employee or group of employees may have in support of the claim.

"7. In recommending rates the Board will be guided by the provisions of Act of Congress of August 24, 1912, and of Executive Order of Feburary 2, 1914, which provide that, 'the salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in continental United States,' and by the general Panama Canal policy of paying twenty-five per centum over pay for comparable work in Government service in the continental United States. When no similar Government positions exist, Canal rates may be recommended on the basis of not to exceed twenty-five per centum above salaries or compensation in non-governmental positions, provided that such rates coordinate with those of other employees of The Panama Canal and Panama Railroad."

16 14. Personnel Regulations of the Panama Canal Zone, dated March 1, 1928, contained, among others, the following paragraphs:

"33. WAGE BOARD

"33.1 Membership.—The Wage Board, formerly known as the 'Board on Rates of Pay—Gold Roll,' will be composed of 2

members; 1 appointed by the Governor and 1 nominated by the Panama Metal Trades Council and approved by the Governor The latter member must be a bona fide employee of The Panama Canal or the Panama Railroad.

"33.3 Cases handled.—Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board."

15. Based on the opinion and recommendations of Major R. A. Wheeler, a member of the Wage Board, the Governor of the Panama Canal issued a memorandum and schedule of rates and pay for positions on certain floating equipment as follows:

"BALBOA HEIGHTS, C. Z.,
"*October 31, 1930.*

"Memorandum for Marine Superintendent
Superintendent of Dredging

"RULES OF PAY-POSITIONS ON FLOATING CRAFT

"1. The following memorandum from the Governor is quoted for your information and guidance:

"BALBOA HEIGHTS, C. Z.,
"*October 29, 1930.*

"1. The increases in pay allowed for any position on pipe line suction dredges when operating with a relay or when the master is absent are hereby discontinued, effective December 1, 1930.

"2. Major Wheeler's schedule will be used hereafter as a guide in adjustments of pay on the floating craft of the Marine and Dredging Divisions, unless in the meantime positions can be based on craft operated by the United States Government.

17 "3. No rates of pay will be reduced (except as indicated in paragraph 1 above) but when basic rates are adjusted upward other positions will not move upward accordingly, unless Major Wheeler's schedule shows an increase is due. When the basic rates are lowered by any stated amount all positions will move downward the same amount.

"4. Thus there will be a gradual approach toward the differentials recommended by Major Wheeler, but no changes in rates (except as indicated in paragraph 1) will be made either for men now in service or for new men taken on or promoted. Furthermore, the differentials recommended by Major Wheeler are to be

considered as tentatively adopted, and if any specific inconsistencies are found in his schedule the matter may be taken up by a separate letter concerning any one or more positions.

"H. BURGESS, *Governor.*

"2. In conformity with the foregoing, until approval otherwise is authorized, rates of pay (except as specifically stated to the contrary) of all positions on the following floating equipment, and rates of pay for certain shore positions coordinated with floating equipment positions, shall be based on one controlling rate in the Dredging Division—and that is the rate for master of pipe line suction dredge, which rate in turn shall be based upon rates paid on plant operated by the Engineer Corps, U. S. Army, in the United States, derived in accordance with the method of computation heretofore approved.

"(a) Pipe line suction dredges—all positions.

* * * * *

"3. The schedule of differentials proposed by Major Wheeler and approved tentatively by the Governor is not reproduced in full in this memorandum due in part to the burden of typing and in part to the fact that the pay of none of the employees concerned is affected at this time (except as indicated in paragraph 1 of Governor Burgess' memorandum), nor will be affected until such time as adjustments are made in the rate for master pipe line suction dredge, in conformity with changes in basic rates in the United States. The following tabulation, however, shows the proposed coordination in rates of pay for the greater portion of the various floating equipment positions and the relation between the master's rate on each piece of equipment to the rate for master, pipe line suction dredge:

Equipment	Rate of pay for—								
	Master	Chief engr.	Engr.	Chief opr.	Opr.	Mate	Foreman	Master's differential with respect to rate for master P. L. S. D.	Change
Las Cruces	$336	$311	$266	$311	[1]$276	$231	$211	+$20	0

[1] This amount is apparently an error, as "Memorandum for Personnel Bureau" dated December 2, 1929 (Plaintiff's Exhibit No. 4), shows the rate of pay for operators to be $306 per month. See also Finding 4.

"4. Dredging and Marine Division employees affected who are desirous of ascertaining changes in differentials which have been

tentatively approved may obtain this information from any of the following sources:

"Marine Superintendent.
"Superintendent, Dredging Division.
"Bureau of Statistics, Executive Dept.
"Labor Member, Wage Board."

16. Section 23 of the act of March 28, 1934, has been quoted in finding 2. April 4, 1934, the Chief of the Washington Office of the Panama Canal wrote to the Comptroller General of the United States as follows:

"The Governor of The Panama Canal has requested by radio decision as to the application of Section 23 of the Independent Offices Appropriation Act for the fiscal year ending June 30, 1935 (Public, No. 141), which was passed on March 28, 1934. That section reads as follows: [Here follows Section 23, quoted in finding 2.]

"The Governor's radiogram of April 3, 1934, in which explanation is made of the situation and the questions to which answers are desired are propounded, read as follows:

"Interpretation is desired regarding application of Act to Canal employees. Twenty-five hundred American employees in Canal service [are] now working following hours per week:

Administrative and clerical workers	42
Shop and building trade craftsmen	48
Operators locks, power plants, pumping plants	48 or more
Pilots and employees on floating equipment	48 or more
Physicians, nurses, policemen, and firemen	50 or more

19 "For employees not under classification, compensation of these employees is fixed by the Governor with assistance of wage boards. Ascertain if Section 23 of Independent Offices Act requires payment of overtime after 40 hours' service per week for

"(1) Employees in artisan and mechanical groups compensated at hourly rate of pay;

"(2) Similar employees compensated at monthly and annual rates of pay;

"(3) Employees on floating equipment, policemen, firemen, etc.;

"(4) Physicians, nurses, clerical, and allied workers under classification * * *"

The Comptroller General rendered his decision on the foregoing matters on April 12, 1934, and subsequently, in response to a request from the Governor of the Panama Canal for reconsideration and for answers to several other specific questions, he rendered a second decision on August 25, 1934. He held that Section

23 was applicable to employees of the Canal Zone, including monthly employees, and that it required that the regular hours of work of such employees be limited to 40. He also held that no additional compensation for overtime was authorized as to employees who were on a monthly pay basis. The decisions of the Comptroller General of April 12, 1934, A–54726, and August 25, 1934, are printed in 14 Comp. Gen. 156–165.

17. The records of the Panama Canal do not disclose that plaintiff or any other pipeline suction dredge operator made any formal demand to be placed on a 40-hour-week schedule or to be paid overtime for time worked in excess of 40 hours per week after March 28, 1934. Immediately before his retirement, however, plaintiff sent the following letter to the Executive Secretary under date of August 29, 1939:

"As it is my belief that all Dredgmen should have been given the 40-hour week I propose to submit a claim to the Court of Claims.

"I request a statement to be used in presenting my claim, showing time worked by me in excess of 40 hours per week since the effective date of the Thomas Amendment.

"Would also like to have certified copies of wage board meetings and Governor's approval of wage board recommendations whereby my wages were established.

"I would be glad to confer with you and agree as to the presentation of my claim."

Since plaintiff was employed and compensated on a monthly basis, the official records of the Canal do not show the hours actually worked by him, and plaintiff's request in said letter for a record of the number of hours worked could not be granted.

18. The timekeeper for the master of the dredge *Las Cruces* kept a book or log purporting to show the days each employee reported for work. Plaintiff made a copy from that book of the days worked by him, and made a calculation reduced from a monthly basis to a daily and hourly basis and from the figures thus obtained, computed his overtime as follows:

"105½ days of 8 hours each in excess of 40 hours a week from March 28, 1934, to January 6, 1937, as operator.

"45 days of 8 hours each in excess of 40 hours a week from January 7, 1937, to November 30, 1937, as a chief operator.

"84 days of 8 hours each in excess of 40 hours a week from December 1, 1937, to August 31, 1939, as master."

19. Plaintiff's salary as operator was $306 a month, which he reduced to $14.12 per day by computing it on a 40-hour week basis. His salary as chief operator was $311 a month reduced to $14.35 a day by computing it on a 40-hour per week basis. His

salary as master was $336 a month, reduced to $15.51 per day by computing it on a 40-hour a week basis.

20. Upon the basis stated in findings 18 and 19 plaintiff's overtime compensated for at time and one-half would be as follows:

105½ days as operator	$2,234.49
45 days as chief operator	968.40
84 days as master	1,954.68
Total	5,157.57

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes, as a matter of law, that plaintiff is entitled to recover $5,157.57.

21 It is therefore adjudged and ordered that plaintiff recover of and from the United States the sum of five thousand one hundred fifty-seven dollars and fifty-seven cents ($5,157.57).

Opinion

MADDEN, Judge, delivered the opinion of the court:

The plaintiff was an employee of the Panama Canal. During the period here in question, March 28, 1934, to August 31, 1939, he was, successively, operator or leverman, chief operator, and master, of the dredge *Las Cruces*, which was operated by the Government in the Canal. He was employed and paid on a monthly basis. He worked eight hours per day, six days per week. He claims that under Section 23 of the act of March 28, 1934, 48 Stat. 522, forty hours per week was set as the regular work period for his job, and payment of time and a half for overtime was directed, hence he should have been paid at the rate of time and a half for his sixth day of work in each week throughout the period.

Section 23 is as follows:

"The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half."

On April 4, 1934, which was within a few days after Section 23 was enacted, the Governor of the Panama Canal sought the de-

cision of the Comptroller General as to whether Section 23 was applicable to employees of the Panama Canal, and if so whether it required the payment of overtime to certain described classes of employees. See finding 16. The Comptroller General answered on April 12 that Section 23 was applicable to certain of the employees decribed, since their wages were set by wage
22 boards or other wage-fixing authorities within the meaning of the section and that it was applicable to employees paid by the month as well as those paid by the hour. He made no direct answer to the question of overtime for monthly employees, but a negative answer can fairly be inferred from the following statement:[1]

"You are advised, therefore, that employees of the classes numbered (1) and (2)[2] in the submission are subject to the provisions of section 23 of the act of March 28, 1934. As to class (2), however, no change in the monthly or annual rate of compensation other than that required to pay a rate not lower than the rate per annum or per month paid June 1, 1932, less any applicable percentage reductions, would be authorized. That is to say, they are to receive the same monthly or annual compensation although their regular hours of duty may be reduced."

The Governor thereafter attempted to save some money in spite of Section 23, by putting certain monthly paid employees on an hourly basis. He then divided the June 1, 1932, monthly salary by 224, the number of hours which, he estimated, they had been working per month, including 8 hours a day for six days a week, 16 hours for occasional overtime, and something more for occasional work on Sundays and holidays. According to this statement, they had been working 52 hours per week. Having thus computed their hourly wages, he then added 20 percent to this hourly wage, so as to pay them the same for the new 40-hour week as they would have received before for a 48-hour week, though they had in fact been working, and had been paid for, many more than 48 hours, according to his computation of their previous hourly earnings. The computation is shown at page 163 of 14 Comp. Gen. The net result was to substantially reduce their monthly earnings. The employees complained, and the question was submitted by the Governor to the Comptroller General along with some related questions and a request for re-

[1] The decision of April 12 is quoted in the body of a later decision, 14 Comp. Gen. at 158.

[2] In the question submitted by the Governor, hourly paid artisan and mechanical employees were classified as (1) and monthly paid employees of the same trades were classified as (2).

In other decisions of the Comptroller General, given in response to inquiries from the Public Printer and the Secretary of the Navy, the Comptroller General was more explicit on the question of overtime for monthly employees, 13 Comp. Gen. 265, 270; Id. 277, 280. These decisions are referred to hereinafter.

consideration of his former decision. The Governor's view as to the applicability of the 40-hour week to monthly employees is shown by his statement which was included in the submission to the Comptroller General:

"(a) The former monthly rates of pay for electricians and other craftsmen in operating positions included compensation for a definite amount of overtime service each month, which no longer can be worked under the new la[illegible]." [14 Comp. Gen. at 163.]

The Comptroller General in reply reaffirmed his decision of April 12, and disapproved the recomputation of monthly wages described above (14 Comp. Gen. 156, 164). In demonstrating the impropriety of subtracting that part of the former monthly salary which, the Governor said, had been included to compensate for overtime, the Comptroller General said, at 164:

"* * * it is fundamental that a rate of compensation fixed by the month or year for full-time service is inclusive of any amount of overtime; that is, the compensation is for every day and every hour of the month or year whether or not service is actually rendered. * * *"

At page 165, the Comptroller General said:

"Referring to question no. 2, the procedure adopted changing the monthly rates to per hour rates, with a resulting deduction in weekly earnings, was not proper. As stated in decision of April 12, the proper procedure was to continue the payment of the same monthly rates of compensation even though there may have been a reduction in the number of hours per week and no overtime compensation is authorized. This is the general rule that has been adopted under the 40-hour week statutory provision for all employees paid on a monthly or annual basis to which the provision is applicable."

It appears from the above and from the rest of the statement of the Comptroller General that he decided that Section 23 applied to monthly employees who were artisans or mechanics, and that therefore their monthly salaries could not be reduced below the June 1, 1932, level, no matter how much their hours were reduced. He was not presented with the question as to whether they could be regularly worked more than 40
24 hours a week, since the Governor had taken the position that they could not, but he had advised the Governor in his April decision that Section 23 was applicable to them, and his discussion of the Governor's attempted recomputation assumes that their workweek was to be 40 hours, as Section 23 specifies. In one or perhaps two places in his discussion he observes that monthly employees should not be paid overtime.

It seems that with regard to the plaintiff, and, presumably, other employees similarly situated, the observation in the Comptroller General's statement that monthly paid employees were not entitled to overtime was the part of the statement which the Governor made the most use of. He worked the plaintiff 48 hours a week and paid him no overtime. He could not have done this because he thought Section 23 was not applicable to the plaintiff. The Comptroller General had squarely held that it was applicable. He could not have done it because he thought the 40-hour-week limitation was not applicable to the plaintiff, though other parts of the section were. He had, in his submission of the question, stated that if the Comptroller General adhered to his decision of April 12, monthly employees could not be worked more than 40 hours a week. The Comptroller General's language assumes that the 40-hour-week provision was applicable and that monthly employees would be worked only 40 hours a week. Thus in disregard of the advice which the Governor had asked and received, Section 23 was effectively flouted, and the Governor's attempted economy, which, when presented under another guise, had been rejected by the Comptroller General, was accomplished by the expedient of disobeying the 40-hour-week limitation of Section 23. The record does not show that the question of the legality of this expedient was ever presented to the Comptroller General.

We think that the Governor's solution of the problem was a legally impossible one. Either Section 23 was applicable or it wasn't. The Comptroller General held that it was. If it was, the plaintiff's workweek should have been 40 hours, as the section said it should be, and as the Comptroller General assumed that it would be. If it still remained "fundamental," in the face of the new statute, that a monthly employee's monthly pay is "for every day and every hour of the month or year whether or not service is actually rendered," as the Comptroller General had said in another connection, so that the plaintiff could not be paid for overtime, then he should not have been worked overtime, at least as a regular practice. The attempted combination of this "fundamental" doctrine with Section 23 made an impossible mixture which could not have been intended by Congress. No ordinary rule of law or precept of a department remains fundamental after Congress has, by a statute, negatived it.

In what we have said so far, we have assumed, as the Comptroller General did, that Section 23 applied to employees of the Panama Canal, and to monthly employees. The Government denies both assumptions.

As to the first, the Government points out that Section 23 is applicable only to the situation of "the several trades and occupations" whose wages are "set by wage boards or other wage-fixing authorities." Our findings 12 to 15 show that the wages of artisans and mechanics such as the plaintiff were set by the Governor of the Canal after recommendations made by a wage board appointed for that purpose by the Governor. We think, as did the Comptroller General, that this prerequisite of the applicability of Section 23 was met. The Governor has so administered the law as to employees paid by the hour, since shortly after its enactment in 1934.

As to the second point, the Government urges vigorously that Section 23 was not intended by Congress to have, and consequently does not have, any application whatever to employees paid by the month, either in the Panama Canal or elsewhere. In its brief and argument it presents items of legislative history and statements of departmental practice, which, it claims, support this view.

The most directly pertinent piece of legislative history is a statement made to the subcommittee of the Committee on Appropriations of the Senate [3] by Mr. Alifas, a representative of unions in the American Federation of Labor, "on behalf of the 75,000 or more per diem mechanics and workmen employed at the Navy yards, arsenals, the Panama Canal Zone, and other divisions of the Federal Service * * *." The bill before the com-
26 mittee was the Independent Offices Appropriation bill which proposed to restore the general 15-percent wage cut for federal employees which had been put into effect the previous year. Mr. Alifas urged that his constituents would not be made whole by a mere restoration of the percentage cut; that the departments employing them had further cut their pay by a system of regular lay-offs without pay which had reduced their workweek to 40 hours and their pay correspondingly. He presented a suggested draft of an amendment to accomplish his purpose, as follows:

"Provided, That the rates of compensation for the several trades and occupations, which are set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than the respective wage schedules in effect on June 1, 1932; and that the Navy Department and other departments and independent establishments of the Government are hereby directed to restore to employees any reduction in pay which they have received since June 30, 1932, in addition to the 15-percent congressional cut, without increasing the present hours of service; and that the respective departments and independent offices are hereby authorized to incur such deficiencies as may be necessary to put this provision into effect."

[3] Seventy-third Congress, Second Session, Hearings on H. R. 6663, pp. 59–61.

The committee did not adopt the suggested amendment.[4] But when the bill came to the floor of the Senate, Senator Thomas of Oklahoma, who was a member of the subcommittee, offered the amendment which became Section 23.[5] Such discussion as occurred on the floor of the Senate and the House throws little light on our problem as to whether the benefits of the section were to extend to monthly paid employees. No one suggested that it was not to do so. Senator Cutting, in debate on the bill, said that the bill was designed to do "in effect what the N. R. A. is trying to do, to pay the same amount of wages for shorter periods of labor."[6] If any one had said, at that point in the debate, that a mechanic paid by the month was not to have his hours of labor reduced, it would have been hard to suggest a reason for such a dis-
27 crimination. If the policy was to reduce hours without reducing pay, that policy would have been just as applicable to monthly paid employees as to those paid by the hour. Not a syllable in the text of Section 23, or a word in the debates in Congress, even suggests the distinction which the Government asks us to draw.

The presentation to us of the statement of Mr. Alifas before the subcommittee persuades us that it is quite likely that the idea of Section 23 was originated by the union leaders of the per diem employees for whom he spoke, and that it may well have been their agitation which caused the section to be inserted in the law. But the benefits of a statute, general in terms, and whose policy is applicable to others, cannot be made the exclusive property of the persons or organizations who agitate for and bring about its passage.

The need of monthly paid employees for the protection of Section 23 soon became apparent. As we have seen, as soon as the Governor of the Canal was advised by the Comptroller General that the 40-hour-week provision of Section 23 was applicable to monthly employees, he cut their hours, and cut their wages below the 1932 level. It was their complaint concerning this wage cut which caused the second submission of the question to the Comptroller General. He held that Section 23 not only required that employees who had had their weekly wages reduced by reducing their hours, should have their weekly wages restored to the 1932 level, but that employees who had not had their weekly wages cut, since they were paid by the month and were worked 52 hours a week, should not have them cut, after the enactment of Section 23, by the reduction of their work week to 40 hours.

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[4] Senate Rep. No. 294, 73d Cong., 2d Sess.
[5] Cong. Rec., Vol. 78, Part 3, p. 2977, 73d Cong., 2d Sess.
[6] Cong. Rec., Vol. 78, Part 5, p. 5574, 73d Cong., 2d Sess.

According to the Government's contention, the Governor was right. Section 23 was inapplicable, and he could have maintained the 52-hour work week at the same pay, or could have cut it with a corresponding reduction in pay. The result, then, of an act of Congress, which on its face was just as applicable to monthly employees as to any other employees, and which said that the weekly wages of employees "shall be reestablished and maintained at rates not lower than" the 1932 rates would have been that monthly employees would have had their wages cut below the 1932 level for the first time, while other employees were having theirs restored to the 1932 level. That Con-
28 gress could have sub silentio entertained any such contradictory intention seems incredible. The Comptroller General ruled that the cut in pay was "in contravention of the plain terms of the statute." Thereupon the Governor abandoned that scheme for balancing his budget, but accomplished the same purpose by taking advantage of the Comptroller General's observation that if he worked monthly employees more than the statutory maximum hours, he still would not have to pay them for the extra work.

It is urged that there had been, before the enactment of Section 23, no reduction in the wages of monthly employees other than the general percentage reduction and that therefore the section, except for the proviso, could not have been intended to have any application to such employees. We do not think that it may be assumed that in all the departments having monthly paid mechanical employees there had been no furloughs without pay or other arrangements to spread the work and at the same time keep the pay roll within the available funds. The Governor of the Panama Canal had, it seems, met the problem by increasing the hours of those monthly employees who were retained on the pay roll. Other administrators may have solved it by spreading the work in some such way as that suggested above. As we have seen, the Governor proposed, after Section 23 was enacted, to put his monthly employees on an hourly basis for a shorter week and thus reduce their pay. If the Government's position that Section 23 was inapplicable to them is correct, he could lawfully have done so. The Comptroller General ruled that he could not, and for that reason only he did not. We think, therefore, that there may well have been occasion for the direct application of the first part of Section 23, as well as the proviso, to monthly employees.

The Government points out that in July 1937, after three years of administration of Section 23 as not requiring overtime pay to be paid to monthly employees, Congress amended Section 81 of

Title 2 of the Canal Zone Code (50 Stat. 486, 487), so that, while it still lodged in the President the power to fix the compensation of employees until Congress should do so, it contained the following new language:

"And provided further that nothing contained in this section shall affect the application to employees of the Panama Canal of the provisions of section 23 * * *" [of the Act of 1934].

29 The Government contends that Congress in 1937 presumably was aware of the whole previous history of legislation and executive orders, "the consistent administrative practice of 23 years, including 3 after the passage of Section 23, the Comptroller General's decision on Section 23, and Section 23 itself."

The administrative practice for the first 20 of the 23 years, i. e., down to the enactment of Section 23 in 1934, would have been of no significance even if Congress had been aware of it. Until 1934 the President had, under the 1912 act, the power to fix compensation and hours of work. He had ordered that monthly employees should not receive overtime, and that settled that question until Congress acted. Administrative interpretation was of course in accord with the President's plain order, and proves nothing about what Congress meant by what it did later. In 1934 Congress, in enacting Section 23, provided for overtime for employees in terms that, on their face, did not exclude monthly employees. In 1937 Congress reaffirmed both the President's general power to fix compensation and conditions of employment, and the rights of employees under Section 23. If, as we think, its intention in 1934 in enacting Section 23 had been to give overtime to monthly employees such as plaintiff, and it had known in 1937, as the Government would have us presume, that that intention had been frustated by administrative interpretation, it might plausibly be argued that its proviso reaffirming Section 23 was intended to negative, rather than to ratify, that administrative interpretation.

The proposed amendment of Section 81 of the Canal Zone Code was first introduced in the Seventy-fourth Congress[7] for the purpose of confirming the President's authority to provide for the commutation of leave.[8] The proviso quoted above preserving the effect of Section 23 was attached when the amendment was reintroduced in the Seventy-fifth Congress.[9] The Government quotes letters to the Congressional Committees from the

30 Governor of the Canal and the Secretary of War saying

[7] H. R. 6719, 74th Cong., 1st Sess.
[8] S. Rept. No. 1821, 74th Cong., 2d Sess., p. 2, which incorporates H. Rept. No. 744, 74th Cong., 1st Sess., on the purposes and effects of the proposed amendments of the Canal Zone Code.
[9] H. R. 6144, 75th Cong., 1st Sess.

that Section 23 was "general legislation of the United States which is not applicable to American employees of the Canal generally and affects only a certain number of employees in particular groups by reason of a ruling to that effect by the Comptroller General." These statements as to the limited effect of Section 23 were obviously true, without regard to the problem here in question. None of the employees in the classified service were intended to be covered by it. The ruling of the Comptroller General was not cited, nor its purport stated. The letters therefore contained nothing which would have suggested to Congress that the Governor, having been advised by the Comptroller General that Section 23 was partly applicable and partly nonapplicable to monthly paid employees such as the plaintiff, was, in his administration, ignoring the section completely. If Congressmen had searched out and read the decisions of the Comptroller General they still would have found no intimation that the Governor had, in disregard of those decisions, been continuing to work monthly employees a regular workweek of 48 hours in the face of a statute limiting the workweek to 40 hours. The Government points out that the amendment to Section 81 saving the effect of Section 23 was drafted by the Governor of the Canal. He knew how he had been administering Section 23, but how any Congressman could have guessed it, we cannot see. In these circumstances, the 1937 act seems to us to throw no light upon our problem, and we treat its proviso as being merely a reaffirmation of Section 23 of the 1934 act, with that section's original meaning.

The Government urges that, in addition to the administrative practice of the Governor of the Canal, which was, as we have seen, to disregard the provisions of the law relating to the 40-hour week and overtime pay, the War and Navy Department similiarly administered the statute, and that this consistent administration gives it the meaning urged by the Government. The evidence of this departmental administration consists of letters from the War and Navy Departments to counsel for the Panama Canal, dated in November 1943. The War Department letter says that per annum and monthly employees have not been paid overtime under Section 23. The Navy Department letter says that per annum employees have not been so paid. Neither letter says that such employees have in fact been worked overtime, either regularly, as the plaintiff was, or at all.

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Some further light on what the probable administrative practice of the Navy Department has been, is had from reading the questions submitted by the Secretary of the Navy to the Comptroller General on April 6, 1934, a few days after the enactment of Section 23, and that official's answer.[10] The Secretary's sixth

[10] 13 Comp. Gen. 277.

question was whether per-annum or per-month employees who worked in excess of 40 hours a week "because of an extraordinary emergency" would be entitled to overtime pay under Section 23. The Comptroller General said they would not, and referred the Secretary to his decision of a few days earlier relating to employees of the Government Printing Office. In that decision [11] he had said, at page 269:

"* * * the regular hours of work of per annum employees within the terms of Section 23 of the act of March 28, 1934, are required to be fixed at not to exceed 40 per week * * *"

In answer to question six of the Public Printer, as to whether per-annum employees were entitled to overtime compensation, the Comptroller General said, 13 Comp. Gen., at page 276:

"Question 6 is answered in the negative. The term "overtime" has never been applicable to employees paid on an annual basis and there is no purpose or intent shown by section 23 of the act of March 28, 1934, to extend the right to overtime compensation to employees paid on an annual basis who may be required to work more than their regular tour of duty of 40 hours per week."

It appears then that the Secretary of the Navy never even raised the question as to whether he could work per-annum and per-month employees more than 40 hours a week without extra compensation except in the case of "an extraordinary emergency." In answer he was told that the regular hours of work of such employees were, by Section 23, "required to be fixed at not
32 to exceed 40 per week," but that overtime need not be paid for overtime work "because of an extraordinary emergency." Whether or how often extraordinary emergencies arose before the overtime statutes were, in the war emergency period, more explicitly made applicable to monthly employees, we do not know. We have no reason to suppose that the Secretary of the Navy or the Secretary of War, like the Governor of the Panama Canal, disregarded the 40-hour-week limitation and habitually worked monthly employees overtime without compensation.

So far as the administration of Section 23 has been disclosed to us, it would seem to have been that monthly paid mechanical employees in the Navy and War Departments, the Government Printing Office, and in any other agency of the Government which had such employees, except the Panama Canal, had their hours of work reduced to 40 without any cut in their pay. The Comptroller General had ruled that that was their right, and we have no evidence whatever that that ruling was not followed. The Government contends that the administrative practice was that Section 23 was not applicable to monthly employees. We think

[11] Comp. Gen. 265.

that all the evidence there is, and the fair inferences that may be drawn from it, show exactly the opposite. There is not even any evidence that the Governor of the Panama Canal ever again entertained the thought, after the Comptroller General's rulings in 1934, that Section 23 was not applicable to monthly employees. All that appears is that he regarded as providential, and took full advantage of, the Comptroller General's subordinate ruling that, even though he did not obey the law, he would not have to pay overtime.

In view of what we have supposed to have been the practices of the other departments, the plaintiff and other Canal employees similarly situated were the victims of gross discrimination. Monthly employees in other departments kept their former pay, plus the restoration of the fifteen percent cut, though they worked only 40 hours. The plaintiff had to work 48 hours to keep his former pay, plus the restoration. There is nothing in the doctrine that administration may give meaning to a statute which permits one administrator, of several who have applied the law, to give it a meaning essentially different from that given by all the
33 others, and thus in effect make a special and peculiar law applicable only to those persons who have the misfortune to come within the area of his administration. Section 23 gave the same rights to employees of the Canal as it gave to employees in the other departments.

To justify the Governor one would have to rely on the ruling of the Comptroller General to the effect that though Section 23 was applicable and limited the work week to 40 hours, yet a longer work week required no additional compensation. In fairness to the Comptrolier General, it should be repeated that, so far as appears, the Governor's interpretation of his ruling as permitting habitual violation of the law with impunity, was never presented to him for comment. That ruling, at least as thus interpreted, is without justification in the text of the statute, without logic, and productive of the sort of administrative confusion and discrimination which here confronts us.

What the intended beneficiaries of the statute, the employees, would get under such a doctrine, would, as it has done in this case, range all the way from nothing, in the Panama Canal employment, to much, in the Navy and other departments, where they seem to have had a 40-hour week unless it was extended because of an extraordinary emergency.

The Government cites numerous instances of legislation since the beginning of the war emergency relating to compensation for overtime in Government employment, concerning which, it says, the reports and debates show that those Congressmen who had charge of the legislation thought that monthly and annual em-

ployees had not previously been entitled to overtime compensation. We suppose that that was the impression of informed persons. It should have been, since in fact such employees were not getting overtime compensation, because the Comptroller General's rulings had denied it to them. For Congress to have excluded such employees from the new legislation, and to have relegated them to lawsuits to reverse the Comptroller General's rulings concerning the old legislation, would have meant that these employees would probably have left the Government's employment, outside em-
ployment at high wages being easy to obtain. It is dan-
34 gerous doctrine to attribute to legislation which explicitly resolves, for the future, a doubtful question, an intention on the part of the legislature to adopt, and make retroactive, a previous administrative interpretation of the doubtful language. A legislature should feel free to make clear law for the future without danger that it may, thereby, destroy rights which have properly accrued or create rights which have not properly accrued under the unclear, or misinterpreted, language of the former statute. We are not persuaded, therefore, that Congress, by the recent actions to which we are referred, intended to ratify and make retroactive the Comptroller General's intrepretation of Section 23 as to overtime for monthly employees.

The Government urges that, even if the plaintiff is entitled to recover overtime, his proposed computation of the amount due him is excessive. The plaintiff's method of computation was as follows: he multiplied his monthly salary by 12 and divided that product by 52 to determine his weekly salary. He divided that weekly salary by 5 to ascertain his daily pay for an 8-hour day, which was what he worked in a 40-hour week, which was what Section 23 called for. Taking this daily wage, he added one-half to it, since Section 23 called for time and a half for overtime, and multiplied that sum by the number of times he had worked a sixth day in a week. By that computation, the plaintiff claims, he will be correctly paid time and one-half for his overtime, or sixth day, work.

The Government contends, on the other hand, that the plaintiff's monthly pay was for every day in the month, since all of his time was hired; that his daily pay should be found to be one-thirtieth of his monthly pay, and that therefore he has in fact been paid straight time, not only for the 5 days or 40 hours that he should have worked under Section 23, but also for the sixth day that he was required to work and for which he claims overtime. On that basis, the Government urges that the plaintiff is entitled only to the additional half pay for the sixth day of each week. But if we adopt this method of computation, it seems

that the plaintiff has already been overpaid, for he has also been paid straight time for the seventh day of each week, when he only worked 6 days, and therefore has received more time and one-half for the sixth day.

35 The Government suggests, in the alternative, that the plaintiff's monthly pay should be divided by 26, the number of days on which he was actually required to work; that again he has been paid for all the days, 26, that he did work, and is therefore entitled only to an additional half pay for the days which he worked as sixth days in a week, he already having received his regular pay for those sixth days.

We think the Government's contentions are not valid. When the plaintiff was employed at a monthly salary and was assigned to work 8 hours a day while Section 23 which limited his work-week to 40 hours was in force, we think that he was, in legal effect, hired for a 5-day week, and that his daily wage, since it has become necessary to determine it, must be determined on that basis. It follows that he has not been paid at all for the sixth day of each week, and that he may recover straight time, and one-half time in addition, for the sixth day. We think the plaintiff's method of computation accomplishes that result.

We are aware that the act of October 21, 1940,[12] provided:

"* * * in determining the overtime compensation of the foregoing per annum Government employees the pay for one day shall be considered to be one three-hundred-and-sixtieth of their respective per annum salaries."

The House Committee on Naval Affairs said, in its report[13] on the bill which became the act of June 28, 1940, the first of the emergency overtime Acts:

"Overtime pay has heretofore not been allowed to any per annum employees of the Government, although overtime pay at time and one-half is allowed to per diem employees. * * *

"In order to calculate the amount of overtime pay for per annum employees it is necessary to specify in the act the corresponding daily pay. This has been done in accordance with long-standing Government custom by fixing it at one three-hundred-and-sixtieth of the annual salary on the customary basis of 12 months to a year and 30 days to a month."

The statements in the two paragraphs of this report seem inconsistent, in that if no overtime had previously been

36 paid to per annum employees, it is not clear how there

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[12] 54 Stat. 1205, terminated June 30, 1942.
[13] H. Rept. No. 2257, 76th Cong., 3d Sess., pp. 3–4.

could have been a "long standing Government custom" as to the method of computing it. The custom must have related to computation of daily pay for some other purpose of which we are not advised. We think therefore, that the specific statutory method of computing overtime, enacted for the first time in 1940, should not control the computation in this case.

The Government urges that, if Section 23 is made applicable to the plaintiff's employment, it brings that section into conflict with Section 4 of the Panama Canal Act of August 24, 1912, 37 Stat. 560, 569.[14] That section provides that wages of Canal employees shall not exceed by more than 25 percent the wages paid for the same or similar services to persons employed by the Government in the continental United States. The Government says that the only Government employment in the United States to which the plaintiff's employment was comparable was that in the Engineer Corps, U. S. Army, and that Section 23 was not applicable to that employment.[15] We do not know what the pay of Engineer Corps' employees was during the period here involved, nor how many hours they worked per week. In any event, we do not suppose that Congress intended, in enacting Section 23, to wholly deny its benefits to particular employees, or particular groups of employees, because the effect of its application would be to increase their wages, by some amount beyond the 25 percent differential. The two sections should have been reconciled, if necessary, by a reduction of the plaintiff's wages, and not by an administrative nullification of Section 23. It is not necessary for us to decide, and we do not decide, which of the sections would govern if a real conflict between them were presented.

The plaintiff is entitled to recover $5,157.57. It is so ordered.

Littleton, Judge; and Whaley, Chief Justice, concur.

Dissenting opinion

WHITAKER, Judge, dissenting:

The Economy Act of March 20, 1933, reduced the wages of all Government employees 15 percent. By the Act of March 28, 1934, 5 percent of the pay cut was restored for the
37 remainder of the current fiscal year, and another 5 percent for the following fiscal year. It was called to the attention

[14] The act of June 19, 1934, 48 Stat. 1122, enacted the Canal Zone Code, containing the same provisions.
[15] 13 Comp. Gen. 486; 14 Comp. Gen. 156, 162.

of Congress, however, that the wages of the per diem employees had been reduced more than 15 percent by the device of laying them off one day every two weeks. To take care of this Congress enacted section 23, providing:

"The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, * * * shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932 * * *."

Evidently this section had no application to an employee paid on a monthly or annual basis because there had been no reduction in the wages of such employee except the general 15-percent reduction, and, therefore, so far as such employee was concerned, the provision accomplished nothing. But it did operate to restore the former wages of the per diem employee "minus any general percentage reduction which may be prescribed by Act of Congress." The "weekly compensation" of these employees had been reduced by the one-day lay-off every two weeks. This section restored that cut. It had no other effect.

This was the main purpose of the section; the proviso was inserted to prevent the section's being availed of to increase the hours of labor of these per diem employees.

I do not think any part of the section was intended to have any effect on employees paid on a monthly or annual basis.

The section was adopted as the result of the agitation of Mr. Alifas, who was pleading the cause of per diem workers. The language used by Congress must be construed, it seems to me, in the light of the situation it was trying to remedy. It ought not to be held to include other employees since the provision of the Act to restore wages had no effect whatever on the salaries of employees on a monthly or annual basis.

It seems to me, too, that Congress must have known that employees of the Canal Zone paid on a monthly or annual basis were not given any additional compensation for overtime work.
38 The President's Executive Order plainly stated this. It is also true that the Army and Navy Departments did not pay extra compensation for overtime work of such employees, and this had been the rule in those departments for many years. The fact that the Secretary said that in cases of extraordinary emergency they were not paid extra compensation when required to work overtime does not seem to make any difference. Whether overtime work was only in an extraordinary emergency or was habitual does not seem to me to affect the employee's right to extra com-

pensation, if he in fact worked overtime, for whatever cause. Clearly, such employees in the Panama Canal Zone and such employees in the Army and Navy did not receive extra compensation when they did work overtime, and since this has been the practice over many years Congress presumably knew it. If so, and if Congress desired that they should have extra compensation for overtime labor, it seems to me that it would have used language to explicitly include them.

I do not think section 23 has any application to plaintiff and, therefore, he is not entitled to recover.

It is true that the construction of section 23 by the Comptroller General and its administration by the Governor of the Panama Canal Zone did produce confusion, as the majority opinion says, but no confusion results if it is held that section 23 has no application to such employees at all, and this I think is the correct view to take.

JONES, Judge, took no part in the decision of this case.

39 *Judgment of the court*

March 6, 1944

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes, as a matter of law, that plaintiff is entitled to recover $5,157.57.

It is therefore adjudged and ordered that plaintiff recover of and from the United States the sum of five thousand one hundred fifty-seven dollars and fifty-seven cents ($5,157.57).

Proceedings after judgment

On April 20, 1944, the defendant filed a motion for leave to file a further motion for new trial, and said motion was overruled April 20, 1944.

On April 20, 1944, the defendant filed a motion for an extension of time to April 30, 1944, within which to designate the record to be certified for its petition for Writ of Certiorari.

On April 22, 1944, said motion was overruled.

On May 18, 1944, the defendant filed a request for record in re certiorari.

41 [Clerk's certificate to foregoing transcript omitted in printing.]

42 In the Court of Claims of the United States

No. 45097

LOUIS TOWNSLEY, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

Stipulation of Facts

Filed Nov. 3, 1942

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the facts hereinbelow set forth, incorporated herein by attachment and incorporated herein by reference shall, for the purposes of this case, be deemed to have been proved by competent evidence and shall constitute and be treated as part of the record in this case, subject to the following reservation, to wit, that either party may object to any of the facts hereby stipulated and agreed to on the grounds of irrelevancy or immateriality or both.

The facts hereby stipulated and agreed to are as follows:

I. On February 2, 1914, the President of the United States promulgated Executive Order No. 1888 fixing the general conditions of employment governing employees of the Panama Canal on the Isthmus. A true copy of said Executive Order is attached hereto as "Exhibit A." On January 15, 1917, the President of the United States promulgated Executive Order No. 2514 amending Executive Order No. 1888 of February 2, 1914. A true copy of Executive Order No. 2514 of January 15, 1917 is attached hereto as "Exhibit B."

II. Copies of certain official records and documents of the Panama Canal, certified as true and correct by the Executive Secretary thereof, are attached hereto as "Exhibit C." Said exhibit consists of thirty-seven (37) sheets, numbered con-

43 secutively in the lower right-hand corner of each sheet. The first sheet is the certificate of the Executive Secretary of The Panama Canal. Twelve (12) separate documents, consisting of one or more sheets, make up the remaining thirty-six (36) sheets, namely

(1) The original letter from the Governor of the Panama Canal to the first members of the Wage Board establishing the Board, appointing the individuals to whom the letter was directed to the Board and indicating the general functions and procedures of the Wage Board, dated March 11, 1919. (Sheets 2 and 3.)

(2) Page from the Panama Canal Record of April 9, 1919, containing the Governor's circular indicating that the above-referred to letter had been written and adding certain procedural requirements. (Sheets 4 and 5.)

(3) Original letter from the Governor restating the composition, functions, and procedures of the Wage Board, May 21, 1927. (Sheets 6 and 7.)

(4) Memorandum from the Governor to the Wage Board indicating their jurisdiction for making recommendations for the wages of certain positions. (Sheet 8.)

(5) Excerpts from Personnel Regulations, The Panama Canal, regarding the functions and procedure of the Wage Board promulgated by the Governor March 1, 1928. (Sheets 9 and 10.)

(6) Minutes of 287th meeting of Wage Board, March 12, 1929. (Sheets 11–15.)

(7) Minutes of 332d meeting of Wage Board, June 21, 1933. (Sheets 16–21.)

(8) Memorandum from the Governor to the Wage Board dated November 29, 1929. (Sheet 22.)

(9) Memorandum from the Executive Secretary to the Personnel Bureau dated December 2, 1929. (Sheets 23–25.)

(10) Memorandum from Major R. A. Wheeler, member, Wage Board to the Governor recommending rates of pay for Dredging Division employees, dated March 25, 1930, known as the "Wheeler Schedule." (Sheets 26–33.)

(11) Memorandum from the Governor dated October 29, 1930, indicating that the "Wheeler Schedule" would govern the adjustment of pay in floating craft of the Marine and Dredging Divisions. (Sheet 34.)

(12) Memorandum from Executive Secretary to the Superintendent of the Dredging Division and the Marine Superintendent, dated October 31, 1930, publishing wage schedules for Dredging Division based on Governor's memorandum of October 29, 1930. (Sheets 35–37.)

44 The first five documents relate to the origin, development, and functions of the Wage Board referred to by plaintiff in his testimony in this case. The remaining seven documents relate to the establishment of the wage rates for the positions held by plaintiff.

III. From March 28, 1934, to January 6, 1937, plaintiff was employed by The Panama Canal as Operator (pipe line suction dredge) at the rate of $306 a month. From January 7, 1937, to November 30, 1937, he was employed as Chief Operator (pipe line suction dredge) at the rate of $311 a month. From December 1, 1937, to August 31, 1939, at which time he retired, plaintiff was

employed as Master (pipe line suction dredge) at the rate of $336 a month.

IV. Plaintiff worked on the Panama Canal pipe line suction dredge *Las Cruces*. It is a diesel-electric hydraulic dredge with a 24-inch diameter discharge and a displacement of 2,500 tons. The hull is 226 feet long, 50 feet wide, and 14 feet deep. There are two spuds, each weighing 110,000 pounds, and an agitating ladder 90 feet long. The main power plant consists of four 911-H. P. diesel engines, each connected to a 550-K. W., 270-volt main generator and a 220-K. W., 120-volt auxiliary generator. In addition to the dredging pump, which is driven by a 2,500-H. P. electric motor at 1,000 volts (maximum) power is supplied for one 300-H. P. cutter motor, one 100-H. P. swinging and ladder hoist motor, one 100-H. P. spud motor, one 75-H. P. fire pump motor, and 28 miscellaneous motors on various auxiliary equipment, ranging from 1 H. P. to 50 H. P. The main switchboard is a 12-panel dead front. There is one Auxiliary switch panel for changing from three or four engines to two-engine operation and also one auxiliary switch panel for changing the auxiliary generators from self-excitation to separate excitation. There are also panels for 24 power circuits and 40 lighting circuits.

During the period in question (March 28, 1934, to August 31, 1939) this dredge operated on a schedule of 24 hours each day, except Sunday, on three eight-hour shifts and was engaged most of the time in maintaining Canal channels and terminal
45 harbors. Channels vary from 300 feet to 500 feet in width and work is carried on in the face of shipping. A considerable amount of original excavation is also handled in connection with channel and harbor improvement work and occasional work is done in the production of river sand and gravel for construction purposes and in excavation of coral and sand or other materials from borrow pits for use in developing air fields or for making hydraulic fills for other uses. The output of the dredge varies from about 500 to 2,000 cubic yards of material per hour, pending upon the class of material and the location of the dump. The length of the pipe line in use varies from about 2,000 feet to 10,000 feet and consists of both floating and shore sections. Usually spoil must be deposited with especial regard to maintaining satisfactory sanitary conditions, particularly with respect to mosquito control. Operation is necessary in both fresh and salt water. During the period in question (March 28, 1934, to August 31, 1939) there have been Sundays when the dredge has worked, especially on important work which if stopped would have lost the progress made and therefore had to be carried to completion. During this period certain repairs or replacements were made on

Sundays to cut down lost dredging time during the week. This work consisted of changing main pump casings or runners, relining the pump, changing ladder wire, rearranging shorelines, etc. The Master scheduled these repairs and brought out sufficient men to perform the work, and the Master usually was present to supervise the work which was normally completed on the day watch on Sunday.

The Master of the dredge is in charge of all operations of the dredge including disposition of spoil and supervision of fills, construction of temporary spillways, and other control works directly connected with the operation of this equipment. He is required to have a license as Master, Pipe Line Suction Dredge, issued by the Board of Local Inspectors of the Panama Canal. The Master operates the dredge when required to do so and he is aboard or in the vicinity of the work being done eight hours per day. He is available for emergency calls at all hours. During his
46 employment as Master, Dredge *Las Cruces*, from December 1, 1937, to August 31, 1939, plaintiff's normal duties required his presence either on the dredge or on related work away from the dredge, 8 hours per day and 6 days per week. This was a supervisory position but he was nevertheless required to work certain regular hours, usually from 7 A. M. to 3 P. M. He was subject to call for duty at any hour of the day or night in case of a major break-down of the equipment or any other unusual circumstance. Any Sunday or holiday service required in an emergency was covered by the regulations concerning compensatory time off, as set forth in Section 48.3 of "Exhibit D" attached hereto. Any unusual service performed after regular working hours could have been compensated for by the taking of the following day off for rest and recuperation, although Masters do not usually take advantage of this if they can avoid it, that is, if they feel able to report for duty at the expected hour the following day. If the Master of the *Las Cruces* finds it feasible to leave his job for personal reasons for part of a day, there is usually no objection.

The Chief Operator stands a regular 8-hour watch as Operator (leverman) and is Acting Master during the absence of the Master, which absences average two months per year. The Chief Operator is also in responsible charge of the equipment at all times when the Master is not aboard. He is required to hold a license as Master, Pipe Line Suction Dredge. During his employment as Chief Operator, Dredge *Las Cruces*, from January 7, 1937, to November 30, 1937, plaintiff was required to stand a regular 8-hour watch as Operator on the basis of a 48-hour week. Any Sunday or holiday service required in an emergency was covered by the regulations concerning compensatory time off, as set forth in Section 48.3 of "Exhibit D" attached hereto. Plaintiff usually

worked day shifts only and was the employee usually used to relieve the Operators during their time off. This may have resulted in his having had to work on some of the night shifts. As Chief Operator, he was also the representative of the Master
47 during the latter's absence from the dredge, which occurred quite frequently in the case of a hydraulic dredge as the Master's duties required frequent visits to spoil dumps in current use as well as to sites of prospective work, in addition to absences in connection with a multiplicity of duties away from his dredge, such as inspecting pipe line material and other parts being manufactured, visits to division headquarters to discuss work, etc. During this period plaintiff also served as Acting Master when the Master was on leave.

An Operator of the pipe line suction dredge stands a regular 8-hour watch as Operator (leverman) and is in responsible charge of the equipment at all times when the Master and Chief Operator are not aboard. He is required to hold a license as Master, Pipe Line Suction Dredge. The Operator is in charge of the dredge on his watch and gives orders to the pipe line foremen and to the mate who is in charge of the sailors (deck hands). During his employment as Operator, Dredge *Las Cruces*, from March 28, 1934, to January 6, 1937, plaintiff was required to stand a regular 8-hour watch as Operator on the basis of a 48-hour week. Any Sunday or holiday service required in an emergency was covered by the regulations concerning compensatory time off, as set forth in Section 48.3 of "Exhibit D" attached hereto. During this period he served as Chief Operator as required in the absence of the regular Chief Operator.

V. Compensatory time off is granted in accordance with the regulations issued by the Governor of The Panama Canal. As a rule definite schedules for relief are prepared in advance. Overtime required is arranged orally by the Master, to suit the exigencies of the work. The Master usually fixes his own overtime requirements. However, in some instances he may be specifically instructed by his Supervisor to handle some work at such a time that overtime on his part will be required. He may also receive notice of emergencies requiring special duty outside of regular working hours, from his subordinates, or through his Supervisor. Certified copies of Personnel Regulations, The Panama Canal, Sections 43.1, 43.5, 48.2, 48.3, 48.4, 48.5, and 48.6, indicating overtime regulations and methods of granting compensatory leave, promulgated March 1, 1928, and in effect during the period covered by plaintiff's claim, are attached hereto as "Exhibit D."

48 VI. The records of the Panama Canal do not disclose that plaintiff or any other pipe line suction dredge operator

made any formal demand to be placed on a 40-hour week schedule or to be paid overtime for time worked in excess of 40 hours per week after March 28, 1934. Immediately before his retirement, however, plaintiff sent the following letter to the Executive Secretary under date of August 29, 1939:

"As it is my belief that all Dredgemen should have been given the 40-hour week I propose to submit a claim to the Court of Claims.

"I request a statement to be used in presenting my claim, showing time worked by me in excess of 40 hours per week since the effective date of the Thomas Amendment.

"Would also like to have certified copies of wage board meetings and Governor's approval of wage board recommendations whereby my wages were established.

"I would be glad to confer with you and agree as to the presentation of my claim."

Since plaintiff was employed and compensated on a monthly basis, the official records of the Canal do not show the hours actually worked by him and it was impossible to supply the requested statement. As set forth in Section II above, copies of the proceedings by which plaintiff's wage rates were fixed are included in "Exhibit C" attached hereto.

VII. On April 4, 1934, the Chief of the Washington Office of The Panama Canal wrote to the Comptroller General of the United States as follows:

"The Governor of The Panama Canal has requested by radio decision as to the application of Section 23 of the Independent Offices Appropriation Act for the fiscal year ending June 30, 1935 (Public, No. 141), which was passed on March 28, 1934. That section reads as follows:

"'SECTION 23. The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage fixing authorities shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, That the regular hours of labor shall not be more than forty per week; and all overtime shall be
49 compensated for at the rate of not less than time and one-half.'

"The Governor's radiogram of April 3, 1934, in which explanation is made of the situation, and the questions to which answers are desired are propounded, reads as follows:

"'Interpretation is desired regarding application of Act to Canal employees. Twenty-five hundred American employees in Canal service now working following hours per week:

Administrative and clerical workers	42
Shop and building trade craftsmen	48
Operators, locks, power plants, pumping plants	48 or more
Pilots and employees on floating equipment	48 or more
Physicians, nurses, policemen, and firemen	50 or more

"'For employees not under classification, compensation of these employees is fixed by the Governor with assistance of wage boards. Ascertain if Section 23 of Independent Offices Act requires payment of overtime after 40 hours' service per week for

"(1) Employees in artisan and mechanical groups compensated at hourly rate of pay;

"(2) Similar employees compensated at monthly and annual rates of pay;

"(3) Employees on floating equipment, policemen, firemen, etc.;

"(4) Physicians, nurses, clerical and allied workers under classification * * *'"

On April 12, 1934, the Comptroller General rendered his decision on the above matters, A-54726, 14 C. G. 158. On August 25, 1934, the Comptroller General rendered a second decision in response to a request by the Governor of The Panama Canal for reconsideration of the decision of April 12, 1934, and for answers to certain questions submitted (14 C. G. 159-165). The aforesaid decisions of the Comptroller General are incorporated herein by reference.

Dated October 31, 1942.

KING & KING,
Attorneys for Plaintiff.

FRANCIS M. SHEA,
Assistant Attorney General of the United States.

50 *Exhibit A to stipulation*

EXECUTIVE ORDER

PROVIDING CONDITIONS OF EMPLOYMENT FOR THE PERMANENT FORCE FOR THE PANAMA CANAL

By virtue of the authority vested in me by law, it is hereby ordered that the general conditions of employment governing employees on the Isthmus of Panama, necessary for the completion, care, management, maintenance, sanitation, government, and operation of the Panama Canal, the Canal Zone, the Panama Railroad, and other adjuncts, shall be as follows:

Appointment and Compensation

1. The salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in Continental United States, as determined by the Governor of the Panama Canal.

2. Service must be satisfactory to the head of the department in which employed, and employees are subject to the regulations of the Governor.

3. The compensation and conditions of employment of persons employed in the United States will be specified in provisional appointments. The compensation of such persons will begin upon date of embarkation at port of departure from the United States, and they will be granted free transportation from port of departure, including meals on the steamer, but no compensation or expenses for the journey to the port; but former employees from the United States whose next preceding service with the Panama Canal was less than one year shall be paid only from date of entry into service on the Isthmus, and will be allowed only such reduced rates of transportation to the Isthmus as may be available for Government employees. Employees appointed at an hourly rate will be paid for the period of transit to the Isthmus on the basis of an eight-hour day exclusive of Sundays. Except in case of discharge or other separation from the service beyond the employee's control, payment of salary from date of embarkation to date of arrival on the Isthmus will not be made unless service on the Isthmus continues for thirty days.

4. All officers and employees in the service of the Panama Canal except those who are to perform the duties of clerk, bookkeeper, stenographer, typewriter, surgeon, physician, trained nurse, or draftsman, shall be exempt from examination under Civil Service rules, and appointments to clerical positions on the Isthmus of Panama paying $75.00 per month or less may also be made without examination. Officers and employees now in the service of the Panama Railroad Company on the Isthmus may be transferred to and retained in the service of the Panama Canal without examination, whenever any work now performed independently by the Panama Railroad is consolidated with similar work performed by the Panama Canal.

5. When employees in the present organization are transferred to the permanent organization, they shall retain their seniority as regards questions of Civil Service, quarters, and other privileges or considerations; provided, however, that the seniority granted to employees by this order shall not be operative in any

case so as to form any claim involving the payment of funds o the United States.

6. All employees who receive over $75.00 per month or over 40¢ per hour must be citizens of the United States or the Republic of Panama, and such citizens will be given preference for employment in all grades. Aliens may not be employed in such grades unless

(a) they have occupied similar positions during the construction of the Canal for two years of more, or

(b) in case of emergency, in which latter case they must be replaced by citizens of the United States or Republic of Panama as early as practicable.

51 7. The Governor shall prescribe regulations, when not otherwise fixed in this order, setting forth the qualifications necessary for appointment of the various classes of employees, including physical fitness for work on the Isthmus. The age limit shall in all cases be under 45 years, but the Governor may waive this limit when in his judgment such action is for the good of the service.

8. All appointments shall be made by the Governor of the Panama Canal or by his authority, except the district judge, district attorney, marshal, clerk of district court, and his assistant.

9. Assignment to duty is vested in the respective heads of the departments, and employees will be expected to perform such duties as may properly be assigned to them. The Governor may discharge an employee at any time for cause, and terminate a provisional appointment when the exigencies of the service so require.

10. The Government reserves the right to pay in any money the value or parity of which is guaranteed by the United States.

11. Employees whose salaries are fixed on a monthly or annual basis will receive no pay for overtime work.

12. Employees above the grade of laborer, appointed with rates of pay per hour or per day, will not be employed over eight hours in any one calendar day, except in case of emergency. The time such employees work over eight hours in one calendar day, and time worked on Sundays and regularly authorized holidays, including January 1st, February 22nd, May 30th, July 4th, Labor Day, Thanksgiving Day, and December 25th, shall be considered overtime for which time and one-half will be allowed. Such employees who work on the days prior and subsequent to the holidays specifically named above will be allowed their regular pay for eight hours for such days, in addition to pay for any work performed.

13. An employee whose compensation while on duty carries with it subsistence will not be entitled to same or commutation

thereof while on leave of absence, and no commutation of quarters shall be paid.

Transportation

14. Employees and dependent members of their families will be granted the regular Government rate upon commercial steamship lines with which arrangements for such rates can be made. While the United States operates a steamship line, either directly or through the Panama Railroad Company, employees and the dependent members of their families will be granted transportation at the same rates and under the same conditions as are at present in effect. The rates and conditions are subject to change at any time in the discretion of the Governor.

15. After three years' service, employees who are citizens of the United States will be entitled to free transportation for themselves only, on termination of service, to any port of the United States, except that when such transportation costs the Government more than $40.00 the employee must pay the excess.

16. Employees on the gold roll will be granted one complimentary round-trip pass on the Panama Railroad each calendar month. Mileage books for use of such employees and dependent members of their families or relatives temporarily residing with them, will be furnished at one-half regular tariff rates.

Quarters

17. Where practicable, such bachelor quarters on the Isthmus as may be available from time to tome will be assigned all employees desiring them. Family quarters, when available, will be assigned under such rules as may be prescribed by the Governor. A charge will be made for rent, fuel, and electric current at such time and in accordance with such regulations as the President may hereafter establish.

52 Medical Care

18. Employees injured will be compensated in accordance with such regulations as are prescribed by law.

19. All employees in cases of illness or injury will receive free medical care and attendance in the hospitals, except in cases of alcoholism or venereal disease. If medical attendance is furnished in quarters, a charge may be made under regulations to be prescribed by the Governor. Employees will be charged for medical care and attendance furnished members of their families at the hospitals and at their quarters at such rates and under such regulations as may be prescribed by the Governor.

Leave Regulations

20. All employees who are citizens of the United States, and aliens whose compensation is more than $75.00 per month or 40¢ per hour, shall be entitled to leave privileges.

21. Leave will be divided into three classes, viz: (1) annual leave, (2) cumulative leave, and (3) travel leave.

Annual Leave

22. Twenty-four days annual leave will be allowed each employee for each year after entry into service and, if not granted prior to the close of the year, is forfeited and may not be accumulated, except that any annual leave remaining to an employee's credit in a year in which he is granted cumulative leave may be added to the cumalative leave if taken within two months after the close of his service year.

23. The service year shall date from the day on which an employee's pay in the permanent organization begins.

24. Absences of one-half day or more, when regularly authorized, will be charged against annual leave; also absences on account of illness or injury, upon the certificate of an authorized physician in the service of the Panama Canal, except that in the following classes of cases no payment shall be made for time lost, but the time shall be charged against the annual leave:

(a) Illness due to the fault of the employee, as venereal disease and alcoholism.

(b) Injury due to the employee's wilful intention to bring about the injury or death of himself or another.

(c) Elective surgical operations to relieve conditions existing prior to service on the Isthmus.

25. In the case of hourly or per diem employees annual leave on account of sickness or injury shall be based upon a day of eight hours.

26. Not more than fourteen days annual leave may be taken during the first six months of a service year. In case of illness or injury in the first six months, to cover which no annual leave remains to the employee's credit, the time lost will be charged against the annual leave remaining for the year, and payment will be made after completing ten months of the service year. After the entire twenty-four days annual leave has been used, additional leave in that service year on account of illness or injury will be deducted from the cumulative leave for that year

and when the cumulative leave becomes due the employee will be paid.

27. After exhausting both annual and cumulative leave for the year, additional absence on account of illness or injury will be without pay, except such compensation as may be prescribed by law for employees receiving personal injuries.

53

Cumulative Leave

28. Thirty days cumulative leave will be allowed each employee paid on a monthly or annual basis for each year of his service, and twenty days to each employee paid on an hourly basis. This leave will be due after completing ten months' service each year and may be taken when the employee's service can be spared. It may be taken annually or left to accumulate to the credit of the employee, provided, however, that leave may not be accumulated for more then three years. If it is not desire to take the entire leave accumulated, the leave earned for the first year, or the first and second years, may be taken, provided that no employee, except at termination of service, may be granted more than ninety days leave with pay at one time. Employees will be paid for cumulative leave at the rate earned when the leave became due at the end of the tenth month of each respective year.

29. In case an employee serves part of a year on the monthly or annual basis and part on the hourly basis, he will be allowed twenty day cumulative leave, except that if he has served eight months or more on the monthly or annual basis during the year he will be granted thirty days cumulative leave.

Travel Leave

30. Employees who travel to points outside the tropics, when on cumulative leave, will be allowed seven days additional leave (or travel leave) with full pay. Travel leave may be allowed approximately once a year and is not cumulative.

31. Employees will be compensated for travel leave and annual leave taken in conjunction with cumulative leave at the rate earned when cumulative leave last became due.

32. After accumulating leave for three years, an employee ceases to earn additional cumulative leave until he is granted all or part of the cumulative leave already earned, unless he shall enter on cumulative leave within two months after completing the third year, or be ordered by the Governor to defer taking leave for official reasons.

33. When an employee's services are terminated on account of misconduct or unsatisfactory service, any annual leave due and travel leave will be forfeited, and cumulative leave will also be forfeited unless written notification has been given that the employee has accumulated the leave, or the four months period within which the employee may enter on leave has passed. Such written notice must be given by employees as soon as possible after cumulative leave becomes due.

34. When an employee's service is terminated, a cash payment in commutation of leave will be made to him for the number of days' cumulative leave due, plus the annual leave due. In the event of his death his estate will be paid the sum due.

35. Employees must enter on cumulative leave within four months after the date when it becomes due, except when accumulated, or unless otherwise authorized by the Governor.

36. Employees must report from leave within one week after the authorized leave expires or forfeit pay for the leave. In case of unavoidable delay, the Governor will decide whether the circumstances warrant an exception to this rule.

37. No restrictions are placed on the localities where leave may be spent.

38. Any employee transferred from the present force to the permanent operating force will be paid at the time of transfer, in addition to his regular compensation, the amount he would have received in payment for leave had he been separated from the service at the time of transfer.

54 39. Leave may be taken only at the convenience of heads of departments, who may direct an employee to accumulate his leave if necessary for the conduct of the work.

40. Leave without pay may be granted by the Governor to all employees, including laborers, for such period as may be prescribed by him.

Office Hours and Hours of Labor

41. Officers hours and hours of labor will be fixed by the Governor within the limits prescribed by law.

42. This order shall take effect from and after the 1st day of April 1914.

WOODROW WILSON.

THE WHITE HOUSE,
2 February 1914.

[No. 1888.]

55 *Exhibit B to stipulation*

Executive Order

Relating to conditions of employment in the Panama Canal service

By virtue of the authority vested in me by law, the general conditions of employment governing employees on the Isthmus of Panama, necessary for the completion, care, management, maintenance, sanitation, government and operation of the Panama Canal, the Canal Zone, the Panama Railroad, and other adjuncts, provided by the Executive Order of February 2, 1914, are hereby amended by rescinding paragraphs numbered 22 to 41, inclusive, and substituting in lieu of such rescinded paragraphs the following:

Annual Leave

22. Twenty-four days annual leave will be allowed each employee for each year after entry into service and any annual leave not used prior to the end of the service year in which it is earned shall be thereafter in the same status and subject to the same rules as cumulative leave.

23. The service year shall date from the day on which an employee's pay in the permanent organization begins.

24. Absences of one-half day or more, when regularly authorized, will be charged against annual leave; also absences on account of illness or injury, upon the certificate of an authorized physician in the service of The Panama Canal, except that in the following classes of cases no payment shall be made for time lost, but the time shall be charged against the annual leave:

(a) Illness due to the fault of the employee, as venereal disease and alcoholism.

(b) Injury due to the employee's willful intention to bring about the injury or death of himself or another.

(c) Elective surgical operations to relieve conditions existing prior to service on the Isthmus.

25. Teachers employed only during the school months, from October to June, inclusive, may be granted not to exceed twenty-four days leave within those months to cover illness or emergency, but will not be entitled to any other leave with pay and will be entitled to no leave with pay from July to September, inclusive.

26. In the cases of hourly and per diem employees annual leave on account of sickness or injury shall be based upon a day of eight hours.

27. Not more than fourteen days annual leave may be taken during the first six months of a service year. In case of illness or injury in the first six months, to cover which no annual leave remains to the employee's credit, the time lost will be charged against the annual leave remaining for the year, and payment will be made after completing ten months of the service year. After the entire twenty-four days annual leave has been used, additional leave in that service year on account of illness or injury will be deducted from the cumulative leave for that year and when the cumulative leave becomes due the employee will be paid.

28. After exhausting both annual and cumulative leave for the year, additional absence on account of illness or injury will be without pay, except such compensation as may be prescribed by law for employees receiving personal injuries.

Cumulative Leave

29. Thirty days cumulative leave will be allowed each employee paid on a monthly or annual basis for each year of his service, and twenty days to each employee paid on an hourly basis. This leave will be due after completing ten months' service each year and may be taken when the employee's service can be spared. It may be taken annually or left to accumulate to the credit of the employee, provided, however, that the maximum number of days leave with pay of all kinds which may be granted at any one time or which may be commuted into a cash payment at termination of service is 120.

30. After cumulative or annual leave is earned and due it may be taken at such times and in such numbers of days as may be satisfactory to the Governor.

31. Leave taken after the close of the service year in which it was earned shall be paid for at the rate of pay received at the end of the tenth month of the service year in which the leave was earned. When an employee enters on a leave of absence which consists of or includes annual leave earned in the same year in which he enters on the leave, such annual leave shall be paid for at the rate received by the employee when he entered on the leave.

32. In case an employee serves part of a year on the monthly or annual basis and part on the hourly basis, he will be allowed twenty days cumulative leave, except that if he has served eight months or more on the monthly or annual basis during the year he will be granted thirty days cumulative leave.

Travel Leave

33. Employees who travel to points outside the tropics, when on cumulative leave, will be allowed seven days additional leave (or travel leave) with full pay, provided the total of all leave with pay granted shall not exceed 120 days. Travel leave may be allowed approximately once a year and is not cumulative.

34. Employees will be compensated for travel leave at the rate earned when cumulative leave last became due.

General Provisions

35. After accumulating leave of all kinds amounting to 120 days, an employee ceases to earn additional cumulative leave until he is granted all or part of the cumulative leave already earned, unless he shall enter on cumulative leave within two months thereafter, or be ordered by the Governor to defer taking leave for official reasons.

36. When an employee's service is terminated, a cash payment in commutation of leave will be made to him for the number of days cumulative leave due, plus the annual leave due. In the event of his death his estate will be paid the sum due.

37. Employees must report from leave within one week after the authorized leave expires or forfeit pay for the leave. In case of unavoidable delay, the Governor will decide whether the circumstances warrant an exception to this rule.

38. No restrictions are placed on the localities where leave may be spent.

39. Any employee transferred from the present force to the permanent operating force will be paid at the time of transfer, in addition to his regular compensation, the amount he would have received in payment for leave had he been separated from the service at the time of transfer.

40. Leave may be taken only at the convenience of heads of departments, who may direct an employee to accumulate his leave if necessary for the conduct of the work.

41. Leave without pay may be granted by the Governor to all employees, including laborers, for such period as may be prescribed by him.

57 Office Hours and Hours of Labor

42. Office hours and hours of labor will be fixed by the Governor within the limits prescribed by law.

This order shall take effect on and after the 31st day of December 1916, and shall apply to all classes of leave with pay earned and due as of that date and thereafter.

WOODROW WILSON.

THE WHITE HOUSE,
15 January 1917.
[No. 2514.]

58 *Exhibit C to stipulation*

THE PANAMA CANAL

CANAL ZONE

Executive Department

UNITED STATES OF AMERICA,
Canal Zone, ss:

I, F. H. Wang, Executive Secretary of The Panama Canal, do hereby certify that I am the custodian of the official records and documents of The Panama Canal, and that the documents which are listed below and are attached hereto are true and correct copies of the originals which are on file in the Executive Office of The Panama Canal:

Letter March 11, 1919.
Extract from The Panama Canal Record, April 9, 1919.
Circular May 21, 1927.
Memorandum August 2, 1927.
Extracts from Personnel Regulations, March 1, 1928.
Minutes of Wage Board meeting, March 12, 1929.
Minutes of Wage Board meeting, June 21, 1933.
Memorandum November 29, 1929.
Memorandum December 2, 1929.
Report March 25, 1930.
Memorandum October 29, 1930.
Memorandum October 31, 1930.

In witness whereof I have hereunto set my hand and affixed the Seal of the Government of the Canal Zone this 5th day of March, 1941.

F. H. WANG,
F. H. Wang,
Executive Secretary.

59 Copied/wrr.

BALBOA HEIGHTS,
March 11, 1919.

Mr. W. J. DOUGLAS,
Engineer of Maintenance, The Panama Canal,
Balboa Heights, Canal Zone.

Mr. W. C. HUSHING,
Representative, Panama Metal Trades Council,
Balboa Heights, Canal Zone.

SIRS: You are hereby appointed as a Board to advise me on wages for The Panama Canal and Panama Railroad employees on the gold roll who are members of the American Federation of Labor.

1. The Board is an advisory one to recommend rates of pay to the Governor and it is without authority to make promises except as to its recommendations.

2. This Board will recommend wages for positions filled in whole or part by employees who are members of the American Federation of Labor.

3. Rates will generally be equal to States rates plus 25% for similar positions in the Government service in continental United States. If there are no similar Government positions, Canal rates may be based on nongovernment ones, plus 25%; provided, however, such rates properly coordinate with similar or related ones in the Canal service which have been established directly on Government ones.

4. The Board will not make recommendations for individuals but for positions.

5. Employees who are members of the A. F. of L. will as heretofore take up matters of wages with their supervisory officers, including Heads of Divisions. If dissatisfied with the ruling received, they may then submit their claims through the A. F. of L. to the Wage Board. If the Governor, after having received the report of the Wage Board, disapproves the request in whole or part, it shall not be resubmitted by the individual to the Governor or the Board, but may again in not less than six months be resubmitted to the Board through the A. F. of L. local organization.

60 6. The Board will hold regular meetings on the first Monday of each month, and such additional ones as are necessary. Requests by Heads of Divisions and Departments, or by the A. F. of L. for change in wages should be submitted to the Governor at least ten days before the meeting at which they will be considered. All requests, whether from the A. F. of

L. or from Heads of Divisions and Departments shall be submitted to the Board through the Governor, and all replies by the Board shall be to the Governor. The Board, however, may, in considering rates of pay, ask for such information orally or in writing from any Canal employee as may be necessary or desirable.

7. The Bureau of Statistics will keep a record of all meetings, and will collect and arrange necessary data, and prepare the basic data of States rates for use of the Board.

Additional instructions will be issued from time to time as may be necessary.

Respectfully,

(S) CHESTER HARDING,
Governor.

61 Copied/wrr.

EXTRACT FROM THE PANAMA CANAL RECORD, APRIL 9, 1919

BOARD ON RATES OF PAY—GOLD ROLL

THE PANAMA CANAL, EXECUTIVE OFFICE,
Balboa Heights, C. Z., March 31, 1919.

To All Concerned:

1. Under date of March 11, 1919, I addressed the following letter to the Engineer of Maintenance and to a representative appointed by the Metal Trades Council:

"You are hereby appointed as a board to advise me on wages for The Panama Canal and Panama Railroad employees on the gold roll who are members of the American Federation of Labor.

"(1) The Board is an advisory one to recommend rates of pay to the Governor and is without authority to make promises except as to its recommendations.

"(2) This Board will recommend wages for positions filled in whole or part by employees who are members of the American Federation of Labor.

"(3) Rates will generally be equal to States' rates plus 25 percent for similar positions in the Government service in continental United States. If there are no similar Government positions, Canal rates may be based on nongovernment ones, plus 25 percent; provided, however, such rates properly co-ordinate with similar or related ones in the Canal service which have been established directly on Government ones.

"(4) The Board will not make recommendations for individuals but for positions.

"(5) Employees, who are members of the American Federation of Labor, will as heretofore take up matters of wages with their supervisory officers, including heads of divisions. If dissatisfied with the ruling received, they may then submit their claims through the American Federation of Labor to the Wage Board. If the Governor, after having received the report of the Wage Board, disapproves the request in whole or part, it shall not be resubmitted by the individual to the Governor or the Board, but may again in not less than six months be resubmitted to the Board through the American Federation of Labor local organization.

"(6) The Board will hold regular meetings on the first Monday of each month, and such additional ones as are necessary. Requests by heads of divisions and departments, or by the American Federation of Labor for change in wages should be submitted to the Governor at least 10 days before the meeting at
62 which they will be considered. All requests, whether from the American Federation of Labor or from heads of divisions and departments shall be submitted to the Board through the Governor, and all replies by the Board shall be to the Governor. The Board, however, may, in considering rates of pay, ask for such information orally or in writing from any Canal employees as may be necessary or desirable.

"(7) The Bureau of Statistics will keep a record of all meetings, and will collect and arrange necessary data, and prepare the basic data of States' rates for use of the Board.

"Additional instructions will be issued from time to time as may be necessary."

2. It is the intention of paragraph 5 of the letter above quoted that all matters for the consideration of the Wage Board come to the Board through the Governor, as is definitely stated in paragraph 6.

3. All requests for changes in rates of pay should be accompanied by a statement of what is claimed and the reason therefor, only one subject to be treated in each letter.

4. The Board will, upon request, hold hearings where those interested may be present in order further to explain their contention. The Board desires to point out, however, that such hearings should not generally be requested. All complaints or requests should be clearly and fully stated in writing, so that the time of the Board may not be unduly occupied with hearings.

CHESTER HARDING,
Governor The Panama Canal,
President The Panama Railroad.

63 Copied/wrr.

BALBOA HEIGHTS, C. Z.,
May 21, 1927.

WAGE BOARD

To All Concerned:

1. The existing board, established by the Governor's letter of March 11, 1919, and known as the "Board on Rates of Pay—Gold Roll," will hereafter be known as the "Wage Board." Its composition and procedure will be as follows:

2. The Board will be composed of two members: one appointed by the Governor and one nominated by the Panama Metal Trades Council and approved by the Governor. The latter member must be a bona fide employee of The Panama Canal or the Panama Railroad.

3. The Board will consider only such cases as are referred to it by the Governor except that, when the wages of any employee or group of employees have been definitely established by the Governor on the basis of rates paid in the United States, the Board may recommend such revisions as are indicated by changes in the basic rates. The functions of the Board are advisory and it is without authority to make promises except as to its recommendations. Recommendations for rates are to be made for positions and not for individuals.

4. Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board.

5. Employees who desire wage adjustments should first take up the matter with their official superiors in their department or division. If a satisfactory adjustment is not secured they should forward their claims to the Governor, requesting submission to the Wage Board. Such claims may be forwarded either directly to the Governor or through labor organizations.

6. Claims for changes in rates of pay should be accompanied in each instance by a written statement of the rate desired and the arguments which are considered to justify it, together with such data as the employee or group of employees may have in support of the claim.

64 7. In recommending rates the Board will be guided by the provisions of Act of Congress of August 24, 1912, and of Executive Order of February 2, 1914, which provides that, "the salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in continental United States," and by the general Panama Canal policy of paying twenty-five per centum over pay for comparable work in Government service in the continental United States. When no similar Government positions exist, Canal rates may be recommended on the basis of not to exceed twenty-five per centum above salaries or compensation in non-governmental positions, provided that such rates coordinate with those of other employees of The Panama Canal and Panama Railroad.

8. The Chief of the Bureau of Statistics, or his Assistant, will act as Secretary to the Board and keep a record of all meetings. When cases have been referred to the Board the Secretary will present to the Board as early as practicable a résumé of such data as are pertinent and available, and will secure through the Washington Office such additional data on States' rates as may be necessary for the proper consideration of the case. The Secretary is authorized to make such use of the clerical force of the Bureau of Statistics as may be required for carrying out these duties.

9. The Board, in connection with consideration of cases referred to it, is authorized to secure directly from any Canal official or employee such information as it may deem necessary or desirable.

10. When the Board summons an employee to appear before it for its own purposes he will be excused by his superior, without loss of leave, being considered engaged on official business. Such summons will be made in writing by the Secretary of the Board. Time lost by individuals in appearing before the Board for their purposes and when not summoned directly by the Board will be charged against the employees' leave and covered by Form 484.

11. Requests for wage adjustments, after having been acted upon by the Board and disapproved in whole or in part by the Governor, shall not be resubmitted within six months from the date of the Governor's decision.

M. L. WALKER,
Governor.

SP*w.

65 Copied/WTT.

BALBOA HEIGHTS, C. Z.,
August 2, 1927.

MEMORANDUM FOR SALARY AND WAGE BOARDS

1. To clarify the situation with respect to the fields of the two Boards, I have approved the allocation of cases to the respective Boards indicated on the attached sheets. The rates marked with an asterisk (*) will normally be referred to the Wage Board, the others to the Salary Board.

2. The general principle which has governed in making this division is that rates adjusted primarily on the basis of States data of actual employment, and wherein administrative coordination among departments is not involved strongly, should go before the Wage Board, and cases wherein the adjustment is locally administrative and coordination is a prime factor should go to the Salary Board. However, as some cases lie in a twilight zone the allocation is in some instances provisional. It may be departed from whenever the Governor may desire the recommendation of the other Board than that to which the case is assigned by this list. Further, as the action of either Board is advisory there is no preclusion of direct action on rates by the Governor when he is satisfied as to the merits of the case.

3. It should be further noted though there is a division of cases between the Boards the basic factors governing their deliberations are the same; both must bear in mind the limitations of the law with respect to the 25 per cent increment and also the requirements of coordination within the Canal and Panama Railroad service on the Isthmus.

M. L. WALKER,
Governor.

Enclosure:
List of rates.

66 Copied/WTT.

MARCH 1, 1928.

EXTRACTS FROM PERSONNEL REGULATIONS

See file No. 2-F-105

33. Wage Board

33.1. Membership.—The Wage Board, formerly known as the "Board on Rates of Pay—Gold Roll" will be composed of 2 members: 1 appointed by the Governor and 1 nominated by the

Panama Metal Trades Council and approved by the Governor. The latter member must be a bona fide employee of The Panama Canal or the Panama Railroad.

33.2. Functions of the Board.—The Board will consider only such cases as are referred to it by the Governor except that, when the wages of any employee or group of employees have been definitely established by the Governor on the basis of rates paid in the United States, the Board may recommend such revisions as are indicated by changes in the basic rates. The functions of the Board are advisory and it is without authority to make promises except as to its recommendations. Recommendations for rates are to be made for positions and not for individuals.

33.3. Cases handled.—Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board. (See 34.2.)

33.4. Procedure for securing readjustments.—Employees who desire wage adjustments should first take up the matter with their official superiors in their department or division. If a satisfactory adjustment is not secured they should forward their claims to the Governor, requesting submission to the Wage Board. Such claims may be forwarded either directly to the Governor or through labor organizations.

33.5. Data to support claims.—Claims for changes in rates of pay should be accompanied in each instance by a written statement of the rate desired and the arguments which are considered to justify it, together with such data as the employee or group of employees may have in support of the claim.

33.6. Twenty-five percent limitation not to be exceeded.—In recommending rates the Board will be guided by the provisions of Act of Congress of August 24, 1912, and of Executive Order of February 2, 1914, which provide that, "The salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in continental United States," and by the general Panama Canal policy of paying twenty-five per centum over pay for comparable work in Government service in the continental United States. When no similar Government positions exist, Canal rates may be recommended on the basis of not to exceed twenty-five per centum above salaries or compensation in nongovernmental posi-
67 tions, provided that such rates coordinate with those of

other employees of The Panama Canal and Panama Railroad. (See 32.1.)

33.7. Secretarial service and data for board meetings.—The Chief of the Bureau of Statistics, or his assistant, will act as secretary to the Board and keep a record of all meetings. When cases have been referred to the Board the secretary will present to the Board as early as practicable a resume of such data as are pertinent and available, and will secure through the Washington Office such additional data on States' rates as may be necessary for the proper consideration of the case. The secretary is authorized to make such use of the clerical forces of the Bureau of Statistics as may be required for carrying out these duties.

33.8. Official information available.—The Board, in connection with consideration of cases referred to it, is authorized to secure directly from any Canal official or employee such information as it may deem necessary or desirable.

33.9. Allowance of time for witnesses.—When the Board summons an employee to appear before it for its own purposes he will be excused by his superior, without loss of leave, being considered engaged in official business. Such summons will be made in writing by the secretary of the Board. Time lost by individuals in appearing before the Board for their purposes and when not summoned directly by the Board will be charged against the employees' leave and covered by form 484. (See 19.2, 47.)

33.10. Resubmission of cases after decision.—Requests for wage adjustments, after having been acted upon by the Board and disapproved in whole or in part by the Governor, shall not be resubmitted within 6 months from the date of the Governor's decision.

68 Copied—phb.

WAGE BOARD

Minutes of 287th Meeting

March 12, 1929

Present: Major R. A. Wheeler, Mr. H. A. McConaughey.
The Board met in the Board Room at 8:58 a. m.

Construction Rates, Electrical Employees

1. Mr. A. C. Garlington, Electrical Engineer, appeared before the Board. Mr. McConaughey said that Mr. Dyer representing

the electricians had advised that it would not be necessary to have any of the employees appear in connection with this case inasmuch as there was no dispute as to the basic facts of the work performed, but only a question of interpreting the circular of February 19, 1925, establishing conditions under which construction rates are to be paid. Major Wheeler read aloud the memorandum from the Governor for the Wage Board under date of March 1, 1929, referring this case to the Board:

"The opinion of the Wage Board is desired on the merit of the request for construction rates. However, the Wage Board must be bound by this instruction, that no extension whatever is to be made in the application of the so-called 'construction rate.' Both Governor Walker and myself have felt that this rate should never have been authorized, and both of us have given much thought to its abolition, although no equitable method of abolition has yet suggested itself."

2. Mr. McConaughey said that it seemed clear to him that under the provisions of the circular, construction rates should be paid to the electricians who had been employed on the installation of new machine shop equipment and new power feeder and panel board at the roundhouse at Balboa Shops, as requested by the employees in this case. Mr. Garlington said that the electricians in the marine gang are engaged on ship work and shop work; that they are not building trades employees but maintenance men doing work for the Mechanical Division. He said this gang was the old Stevens gang which had been in the Mechanical Division for twelve years then was transferred to the Electrical Division for the sake of supervision by the Electrical Engineer but without change in duties. Mr. McConaughey said these men are wiremen in the Electrical Division and under the circular were designated as building trades employees, and for the Electrical Engineer to deny that they were building trades employees would be equivalent to making an arbitrary rule for the interpretation of the circular. Major Wheeler said that the work
69 at the round house was not the kind of job for which construction rates are approved by the circular. Mr. McConaughey said there was no such division in the circular. The members were unable to agree. Their dissenting opinions are expressed as follows:

Opinion of Major R. A. Wheeler, Member, Wage Board

(a) "1. The work on which the construction rate is being requested consisted of the installation of certain machine tools in the roundhouse, Balboa Shops, for which it was necessary to ex-

tend the existing wiring system. The work was performed entirely within the Balboa Shops area, which may be termed the Panama Canal Navy Yard. If this work had been performed in a United States Navy Yard, and such work is regularly performed in U. S. Navy Yards, it would have been done by the regular Navy Yard force at the Navy Yard rate, which, of course, is a maintenance rate and the basis of our rates.

(b) "2. The work was done by a unit of the Electrical Division, consisting of a leading man and a gang of men organized for the specific purpose of performing marine and allied electrical work in the Balboa Shops area. When originally organized, this gang was considered a maintenance unit comparable to a gang of electrical wiremen in any of the United States Navy Yards. It has been consistently so considered ever since. I consider that wiremen assigned to this unit and performing the usual routine work in the Balboa Shops area are maintenance employees and are not to be classified as building trades employees, as provided in the circular on Maintenance and Construction Rates, Building Trades.

(c) "3. It is therefore recommended that the construction rate be denied."

Opinion of H. A. McConaughey, Member, Wage Board

(a) "1. These requests for construction rates should be considered entirely on the basis of the circular of February 19, 1925, which was issued to differentiate construction and maintenance rates. This circular states that construction rates will be allowed to all building trades employees except strictly maintenance employees when performing work on new buildings or additions or alterations to old buildings requiring a minimum labor charge of $300.00 estimated at maintenance rates.

70 (b) "2. The work in question admittedly cost in excess of $300.00 estimated at maintenance rates. It is evident, therefore, that these men should receive the construction rate unless they are strictly maintenance employees.

(c) "3. The circular referred to above states that construction rates will be allowed on the work defined above for certain designated employees, including wiremen in the Electrical Division. These men are wiremen in the Electrical Division. Therefore, under the terms of the circular they clearly cannot be considered as strictly maintenance employees. If not strictly maintenance employees the circular definitely provides that they should receive construction rates on the work in question.

(d) "4. I would call your attention to the fact that Major Wheeler and Mr. Garlington have apparently formed their opinions on this case with an entire disregard of the terms of the circular which was issued to differentiate between the construction and maintenance rates. Their opinion is based on the fact that they believe that work of this character would be performed in a United States Navy Yard by the regular Navy Yard force at the Navy Yard rate of pay. This conclusion might have some weight if the circular governing the matter was based on whether or not the work in question would be so performed. As the circular was not formulated on this basis I consider that Major Wheeler's contention is entirely extraneous to the question at issue. I stand squarely on the circular and claim that the terms of the circular clearly entitle these men to the construction rate."

Operator-Machinists on *Siri*

3. This case came before the Board by action of the Governor on a memorandum from the Superintendent of Dredging to the Engineer of Maintenance, February 11, 1929, transmitting a letter from Messrs. C. M. Banan and W. T. Johnston, February 7, 1929, requesting that their salaries be coordinated with those on supply boats. The members noted the review of the case submitted by the Chief of the Bureau of Statistics under date of March 4, 1929. The case was continued to the meeting to be held on March 19 when representatives of employees might be present.

Engineers on Ferry Tug *Gaither*

4. This case came before the Board by action of the Governor on a memorandum from the Superintendent of Dredging
71 to the Engineer of Maintenance, February 11, 1929, transmitting a request from Engineers A. S. Wallace and W. L. Cassidy, January 29, 1929, for an adjustment to make their rate comparable with the rate paid the Masters on the *Gaither*. The Board noted a review of the case submitted by the Chief of the Bureau of Statistics under date of March 6, 1929. It was agreed to hold a hearing of this case at the meeting to be held March 19.

Foreman, Sand and Gravel Plant, Gamboa

5. This case came before the Board by action of the Governor on memorandum from the Superintendent of Dredging to the Engineer of Maintenance, February 11, 1929, transmitting a letter from foreman A. W. Wynne, February 6, 1929, requesting a rate

coordinated with that of Locomotive Engineer or with one of the supervisory rates around $310.00. The Board noted a review of the case submitted by the Chief of the Bureau of Statistics under date of March 6, 1929. It was agreed to consider the case at the meeting to be held on March 19.

Drill Boat Employees

6. The Secretary reported that the data which had been received was being compiled by Mr. Patterson. Mr. McConaughey said it looked as if all of the data had arrived except new Union Scale to be effective in April and probably it would be as well to proceed to consideration of the case. It was agreed that a summary of the data could be furnished to all concerned in advance of the next meeting at which employees might be present to present any further statements.

Employees on *Las Cruces*

7. This case came before the Board by action of the Governor on memorandum from the Engineer of Maintenance, March 3, 1929 recommending reference to the Board. The Board noted the letter from the Superintendent of Dredging, February 13, 1929; letter from Mr. Louis Townsley, Secretary of The Panama Canal Dredgemen, February 23, 1929; and a memorandum from the Chief of the Bureau of Statistics to the Engineer of Maintenance, February 28, 1929. Mr. McConaughey said the men would not be satisfied with the adjustments proposed by the Superintendent of Dredging or the Chief of the Bureau of Statistics and would desire to appear before the Board to present arguments. The case was continued accordingly.

Employees on Floating Equipment

8. The Board noted the approval of the Governor of the rates recommended in paragraph 19 of the Minutes of the 286th Meeting, January 26, 1929, for positions on Pipe Line Suction Dredges, Dipper Dredges, Floating Cranes, Hydraulic Grader, and Foremen of Barge Repair at Gamboa and Balboa.

72 Building Trades Construction Rates

9. The Board noted the approval of the Governor of the following rates to be effective March 8, 1929, as recommended on the memorandum from the Secretary March 4, 1929:

Craft	Rates per hour	
	Journeyman	Foreman
Bricklayer	$1.93	$2.08
Carpenter	1.48	1.61
Electrician	1.64	1.79
Structural Ironworker	1.67	1.82
Metal Lather	1.65	1.79
Painter	1.46	1.61
Plasterer	1.92	2.07
Plumber	1.68	1.83
Sheet Metal Worker	1.49	
Pipefitter (Steamfitter)	1.69	
Tilesetter	1.71	1.86
Cablesplicer—Wireman. (Same as electrician.).		
Bricklayer, special	[1] 1.60	

[1] Average of maintenance and construction rates for bricklayer.

10. The Board noted that the above schedule increased by 1 cent an hour the rates for Metal Lather Sheet Metal Worker, and by 2 cents an hour the rate for Pipefitter (Steamfitter), over the rates effective from November 1, 1928, to March 7, 1929, inclusive, there having been no change in the rate at the adjustment of of January 1, 1929. The other rates remain unchanged by the adjustment effective March 8, 1929.

11. The Board adjourned at 10:00 a. m.

(Signed) PAUL.
Seymour Paul,
Secretary.

Approved:

(Signed) R. A. WHEELER.
R. A. Wheeler,
Member.

(Signed) H. A. McCONAUGHEY.
H. A. McConaughey,
Member.

73 Copied—phb.

BALBOA HEIGHTS, C. Z.,
June 22, 1933.

WAGE BOARD

Minutes of the 332d Meeting
June 21, 1933

Present: Major W. E. R. Covell, Mr. H. A. McConaughey.

1. The Board met in the Board Room at 8:30 a. m.

Hourly Rates for Chauffeurs

2. Major Covell said that he was of the opinion that hourly rates should be established for construction projects only but

nothing should be said about limiting their application to dump trucks. Mr. McConaughey said that he did not like the hourly rates for chauffeurs, but in view of the circumstances he thought it necessary to agree to their establishment for work on construction jobs.

3. The members agreed to recommend that hourly rates corresponding to the existing monthly rates and being the same as were made effective June 10, 1932, for work at Madden Dam, should be authorized for use on construction jobs as follows:

Chauffeur (gold roll)

Length of Service:	Rate per hour
Less than 1 year	$0.84
1 to 2 years	.87
2 to 3 years	.90
3 to 4 years	.94
More than 4 years	.97

Basic Rate for Chauffeurs

4. Major Covell said that he is convinced that the present Canal rates are legal; that they do not exceed 25% over the compensation for similar employment in the Government in the United States, and that the choice of Government bases for the Canal hourly rates is an administrative matter in the hands of the Governor. He said that the several factors which had been used in arriving at the Canal rate for chauffeurs had resulted in very high rates and while the rates are legal, he considered that in some future adjustment changes might be made in the present method of establishing the rates. At present, however, he said on account of the 15% deduction which is being made from the pay of all Government employees, and the apparent policy of Washington to hold off wage reductions, he was willing to agree to postpone action.

74

5. Mr. McConaughey said that he was in agreement with the foregoing. The members then proceeded to a detailed consideration of the points raised by the Bureau of Efficiency, taking up in order the several features on which Messrs. Evans and Gunther of that Bureau had commented; and submitted the following as a joint opinion of the members of the Wage Board of The Panama Canal:

Opinion of Members

6. The first exception taken by the Bureau of Efficiency is expressed as follows in the report of Messrs. Evans and Gunther:

"*Paragraph 1 (a).* A monthly rate computed by multiplying a basic daily wage by 28 results in paying for 336 working days

during the year, whereas proper deduction for 52 Sundays and 7 holidays leaves only 306 working days. The payment for 30 days during which no work is performed amounts to increasing the basic wage by approximately 10 per cent.

7. These chauffeurs actually work 306 working days plus 24 Sundays and holidays, which would make 330 days. They are also required to work about 20 minutes overtime every day in order to have the equipment in service for a full 8-hour period. This overtime would amount to an equivalent of 14 days per year which, added to the 330 days stated above, would make a total of 344 8-hour days. This number could be greater because overtime on Sunday and holiday work could be counted as time and a half but, without counting these days as time and a half, it is obvious that basing the rate of pay on 336 working days per year seems amply justified.

8. Quoting further from the report to the Bureau of Efficiency:

"(b) The high scale of wages paid to Post Office chauffeurs in the field service should not have been used in determining the wage scale of Canal chauffeurs for the reason that the duties and responsibilities of the two services are not comparable. The work of the Post Office chauffeurs differs from those employed by the Panama Canal in the following respects:

"1. The valuable loads carried make it necessary to place practically all Postal chauffeurs under bond.

75 "2. They must provide uniforms at their own expense.

"3. Much of their driving is in the congested areas of large cities, requiring more skill than is demanded in the small settlements in the Canal Zone. Furthermore, all trucks are operated on a time schedule.

"4. The work is hazardous. The chauffeur is required to carry arms and must protect the mail by force if occasion arises."

9. The differences in duties and responsibilities between the Post Office and Panama Canal services as cited by Messrs. Evans and Gunther are immaterial:

(a) The bond of post office chauffeurs probably costs them not to exceed $5 or $10 per year.

(b) Panama Canal chauffeurs must also provide their work clothing at their own expense.

(c) It is questionable that driving in the congested areas of large cities or anywhere else requires more skill than driving on the narrow, winding Canal Zone roads where there are no traffic signals, no-stop streets, no right-of-way, very few traffic laws, or in the narrow, congested streets of the city of Panama. With regard to time schedules, it is not believed that the time schedules in effect for post office chauffeurs are more exacting than time

schedules for Panama Canal chauffeurs when engaged in construction work.

(d) It is not believed that the work of the post office chauffeurs is more hazardous than hauling gasoline or explosives, a type of hauling often performed by Canal Zone chauffeurs.

10. If the argument of Messrs. Evans and Gunther as to the special skill and responsibility of post office chauffeurs has any merit, it should be taken into consideration that Panama Canal chauffeurs operate much heavier trucks than post office chauffeurs; that they are foremen over gangs of laborers, loading and unloading and distributing materials; that their time is engaged in construction work, operating heavy trucks on soft fills and steep grades, which requires a type of operating skill not required by post office chauffeurs.

11. Comment of the Bureau of Efficiency:

"With reference to the Navy Yards, the trucking work is of a general nature and therefore more comparable with the work performed at the Canal. It would have been more reasonable if the rates for Canal chauffeurs had been based solely on the wage scale in force in the Navy Yards."

76 12. It is believed that much of the trucking work in the Navy Yards is of a lower grade than Panama Canal trucking, so the higher rates of post office chauffeurs were also used. It is quite likely that a major part of the work of Navy Yard chauffeurs consists of short hauls within the yard and that they are only occasionally required to do trucking outside of the yard limits. In support of this view the following is quoted from a letter dated November 28, 1930, from the Commandant of the Mare Island Navy Yard:

"Most of the driving is confined within the Navy Yard limits and generally speaking the driving time is about 25% of the total time and 75% is devoted to loading and unloading."

13. The trucking performed by Panama Canal chauffeurs is all heavy trucking, not a mixture of light and heavy trucking, as is the case in the Navy Yards. The light trucking on the Canal is all performed by alien West Indian chauffeurs at rates of pay materially lower than rates paid to gold chauffeurs. About 90 per cent of the trucks operated by Panama Canal gold chauffeurs are 4- and 5-ton trucks and all of them are two tons or over. When the present rates for Panama Canal chauffeurs were established the majority of the trucks used in the Navy Yards were smaller than the 3½-ton trucks generally used by gold chauffeurs on the Panama Canal.

14. Comment of the Bureau of Efficiency:

"*Paragraph 4.* At the time this schedule was prepared there were 16 Navy Yards with maximum rates ranging from 56 to 75 cents per hour. The average maximum rate for the entire group was 65 cents per hour, but due to the higher rates prevailing at four of the six Navy Yards selected by the Wage Board, an average of 70 cents per hour was obtained and used as a base. As in the case of the Post Office rate schedule, the Navy Yard schedules provided intermediate and minimum rates which were, respectively 5 and 10 cents per hour less than the maximum rates. The Wage Board disregarded this fact, however, and took cognizance only of the maximum rates."

15. In view of the fact that one of the 16 yards is outside of the continental limits of the United States and can not be legally used for determination of our rates, and that other yards such as the Great Lakes, Charleston, New Orleans, etc., are very small, there is less justification in using an unweighted average of all yards than in using the six selected. The method used was considered by the Board, which fixed the rate, as the proper one at the time. The same six yards were used for other rates of pay; they have been used for about 15 years and prior to that time our rates were for several years based on 2, 3, or 4 yards rather than 6. This appears to be a matter of judgment to be considered by the Board whenever rates are discussed.

77

16. It is a fact that the navy yard schedules provide intermediate and minimum rates for chauffeurs but it is not a fact that the Wage Board disregarded this fact. These rates below the maximum rate have been quite generally disregarded in the Navy Yards. The most recent data we have on this question, which is of November 1930, indicates that four of the six yards which constitute our base, New York, Washington, Boston, and Philadelphia, use only the maximum rate. At Puget Sound they use the maximum and intermediate rates and Mare Island, apparently, uses all three rates.

17. Comment of the Bureau of Efficiency:

"*Paragraph 5.* In averaging the Post Office and Navy Yard rates, the Wage Board gave greater weight to the higher rates by the former despite the fact that the work of the Navy Yard chauffeurs was far more comparable with the work of the Canal. The average daily rate thus obtained was then multiplied by 28 to obtain a 'monthly' rate. To appreciate the significance of this computation it is necessary only to recall that in paragraph 3 a divisor of 306 working days was applied to the Canal equivalent of the annual Post Office rate in order to obtain a Canal daily rate. Multiplying this daily rate by 28 to place it on an annual

basis. The result is to add 30 days at full pay to the 306-day base, that is, to increase by approximately 10 per cent the rate which was determined by increasing the Post Office rate by 25 per cent. In other words, the final rate fixed by the Wage Board is some 35 per cent in excess of the rates paid in the Government institutions used for purposes of comparison.

"It is concluded that the action of the Wage Board does not comply with the provision of the Act of 1912 which stipulates that compensation for Canal employees shall not exceed by more than 25 per cent the compensation paid for the same or similar services by the Government in the continental United States."

18. In these paragraphs the Bureau of Efficiency Committee again assumes that we should use a 306-day basis in determining rates for Canal Zone chauffeurs and states that our failure to do so results in approximately a 10 per cent increase over the rate which should have been established and that it is concluded, therefore, that we are violating the 25 per cent differential established by the Panama Canal Act. This conclusion is, of course, based on the erroneous impression that Panama Canal chauffeurs only work 306 days per year.

78 19. The members of the Wage Board agreed that the present base rates for Panama Canal chauffeurs are legal; that they do not exceed 25 per cent of the compensation for similar employment in the Government service in continental United States (annual rates are not comparable unless the number of days and hours of employment are equal), and that the choice of a Government basis for Canal hourly rates is an administrative matter in the hands of the Governor.

20. Major Covell said that the several factors which had been used in arriving at the Canal rate for chauffeurs and resulted in very high rates, and that while the rates were legal, he considered that in some future adjustments changes might be made in the present method of establishing the rates. He said that while at present he does not favor a change he did not wish to be bound by this with respect to the future.

21. With respect to the use of the six highest navy yards in deriving the navy yard portion of the Canal rate, Major Covell said that such selection of yards might be debatable. Mr. McConaughey said that the selection of these yards was not peculiar to the chauffeurs' adjustment, but they were the six yards which had been selected as a base for practically all mechanical and related rates on the Canal. He said the fundamental reason for using these six yards is that there are only seven yards of any importance and the six used, Boston, New York, Philadelphia, Washington, Mare Island, and Puget Sound, are six of the seven major yards, and that the only important yard which was omitted

from the Canal base was Norfolk. Major Covell suggested that the position of the Canal might be stronger if Norfolk were included, as then the comparison would simply be with the average of rates in all the principal yards performing work comparable with the work of the Canal forces. However, he said that this matter was for future consideration as affecting all pay and that he did not believe that this method of establishing one particular rate should be disturbed at this time.

22. The members of the Board agreed that, on account of the present 15 per cent deduction which is being made from the pay of all Government employees and the apparent reluctance of the War and Navy Departments to make wage changes under present conditions it would be better not to make a further reduction in pay now.

23. The members agreed to recommend, for the reasons outlined above, that no changes be made in rates paid chauffeurs at this time.

24. The Board adjourned at 8:55 a. m. without date.

(Signed) PAUL,
Seymour Paul,
Secretary.

Approved:

(Signed) W. E. R. COVELL,
W. E. R. Covell, *Member.*
(Signed) H. A. McCONAUGHEY,
H. A. McConaughey, *Member.*

79 Copied—phb.

BALBOA HEIGHTS, C. Z.,
November 29, 1929.

MEMORANDUM FOR WAGE BOARD

1. It is my desire that very careful consideration be given to the changing of existing differentials in the Dredging Division, and I prefer to give the Wage Board a longer time before making report. I would like, if practicable, to have the two members unite in their recommendations, but if this is impracticable, I will consider separate reports. Report should be made not later than the end of March, 1930, and all positions on floating plant in the Dredging Division should be included. When tug rates are discussed the Marine Superintendent should give his views.

2. There appears to be but one controlling rate in the Dredging Division, and that is the pipe line dredge, which rate is based on plant operated by the United States. Until a comparable plant in other classes than the pipe line dredge is in operation by the

United States, I shall hereafter consider all rates to be based on the controlling rate.

3. For each class of floating craft a table should be prepared showing existing differentials and those recommended for the future.

4. While I do not bind myself for future adjustments, I do not mind saying that it is not usually my desire to lower subordinate rates when the controlling rate happens to move upward. In other words, from my present standpoint, the Board may expect that in any adjustments in the future in which the controlling rate moves upward, the subordinate rates will not necessarily be moved downward to fit the newly adopted differentials.

5. In view of the fact that most of the existing differentials have been in effect for some time, I have decided to authorize an adjustment effective December 1, 1929, in the Dredging Division based on the existing differentials. Any increases caused by this decision are hereby approved, effective December 1, 1929.

(Signed) H. BURGESS,
H. Burgess,
Governor.

HB/P.

80 Copied—phb.

BALBOA HEIGHTS, C. Z.,
December 2, 1929.

MEMORANDUM FOR PERSONNEL BUREAU

1. The Governor has authorized the following rates, effective December 1, 1929, excepting for the rates marked with an asterisk (*), which were authorized effective November 1, 1929:

Pipe Line Suction Dredge (No. 86)

Designation	Old rate	New rate
*Master	$308.00	[1] $316.00
Master, Dredge and Relay	329.00	[1] 336.00
Chief Engineer	304.00	[1] 311.00
Chief Engineer, Dredge and Relay	324.00	[1] 331.00
Chief Operater	304.00	[1] 311.00
Chief Operator in charge of Dredge and Relay	324.00	[1] 331.00
Operator	299.00	306.00
Mate	284.00	291.00
Senior Engineer	289.00	296.00
Engineer	279.00	286.00
Foreman Top	262.00	269.00
Foreman Second	242.00	249.00
Foreman Third	227.00	234.00
Pumpman, Relay	240.00	247.00

[1] Dual rates.

Dredge *Las Cruces*

Designation	Old rate	New rate
*Master	$329.00	$335.00
Chief Operator, acting as master	324.00	331.00
Chief Operator, not acting as master	304.00	311.00
Operator	299.00	306.00
Mate	284.00	291.00
Chief Engineer	324.00	331.00
Engineer	279.00	286.00
Electrician	279.00	286.00
Foreman:		
Top	292.00	299.00
Second	242.00	249.00
Third	227.00	234.00

Dipper Dredges

*Master	$349.00	$356.00
Operator	339.00	346.00
Mate	324.00	331.00
Chief Engineer	344.00	351.00
Engineer	309.00	316.00

Floating Cranes

*Master & Supervisor	324.00	$331.00
Master-Operator	309.00	316.00
Chief Engineer	309.00	316.00
Engineer	264.00	271.00

Hydraulic Grader

*Master	$299.00	$306.00
Mate	274.00	281.00
Nozzleman	242.00	249.00
Foreman	227.00	234.00
Pumpman	220.00	227.00

Drill Boat

*Master	$229.00	$306.00
Mate	284.00	291.00
Blaster	265.00	272.00
Engineer	265.00	272.00
Driller	255.00	262.00
Blacksmith	266.00	[1] 266.00

Gamboa Barge Repair

*Foreman	$261.00	$271.00

Balboa Barge Repair

*Foreman	$224.00	$231.00

Sand & Gravel Plant

*Foreman	$289.00	$296.00

[1] Navy Yard base.

2. When subsistence or use of mess appliances is furnished deductions will be made in accordance with Circular 680–3.

3. The rate for Master of Pipe Line Suction Dredge, as above, is based on rates paid for similar employment under the Government in Norfolk, Va., Wilmington, N. C., Savannah, Ga., and Galveston, Texas. The other rates have been derived by local differentials.

82 4. References: File 2–D–61/S; memorandum from Governor to Wage Board, November 29, 1929.

(Signed) JNO. H. SMITH,
Jno. H. Smith,
Acting Executive Secretary.

CC—Auditor.
Bureau of Statistics.
Personnel Bureau.
Supervising Rollkeeper.
Dredging Division.
Washington Office.
Files.
(7102–1)

83 Copied—phb.

BALBOA HEIGHTS, C. Z.,
March 25, 1930.

RATES OF PAY FOR DREDGING DIVISION EQUIPMENT, TOWBOATS, SUPPLY BOATS, MISCL.

By Major R. A. Wheeler, Member, Wage Board

1 Consideration of these rates is brought about by the memorandum addressed to the Board by the Governer on November 29, 1929, as follows:

(a) "1. It is my desire that very careful consideration be given to the changing of existing differentials in the Dredging Division, and I prefer to give the Wage Board a longer time before making report. I would like, if practicable, to have the two members unite in their recommendations, but if this is impracticable, I will consider separte reports. Report should be made not later than the end of March 1930, and all positions on floating equipment in the Dredging Division should be included. When tug rates are discussed the Marine Superintendent should give his views.

(b) "2. There appears to be but one controlling rate in the Dredging Division, and that is the pipe line dredge, which rate is based on plant operated by the United States. Until a comparable plant in other classes than the pipe line dredge is in op-

eration by the United States, I shall hereafter consider all rates to be based on the controlling rate.

(c) "3. For each craft a table should be prepared showing existing differentials and those recommended for the future.

(d) "4. While I do not bind myself for future adjustments, I do not mind saying that it is not usually my desire to lower subordinate rates when the controlling rate happens to move upward. In other words, from my present standpoint, the Board may expect that in any adjustment in the future in which the controlling rate moves upward, the subordinate rates will not necessarily be moved downward to fit the newly adopted differentials.

84 (e) "5. In view of the fact that most of the existing differentials have been in effect for some time, I have decided to authorize an adjustment effective December 1, 1929, in the Dredging Division, based on the existing differentials. Any increases caused by this decision are hereby approved effective December 1, 1929."

2. It is not practicable for the two members to unite in their recommendations. I have prepared a table showing present rates and differentials, Canal equivalent monthly rates based upon Government rates in the States for Master, P. L. S. D. #86, towboats, dipper dredge Master and *Las Cruces*, and my own recommended differentials and rates with the changes in pay resulting therefrom. I have also prepared a table showing comparison of the principal positions under consideration, which is a summary of the detailed table. These will be discussed under separate paragraphs below for each piece of equipment.

3. The existing small differentials below Masters have existed for many years and in spite of repeated presentations by the employees that smaller differentials are justified here because of different and special conditions of living and employment, officials of the Panama Canal have recognized that many of the rates can not be justified by law. There is always disagreement concerning comparability of equipment but it is noted that rates for dredges or rates for towboats are practically the same within any Government district, regardless of size of equipment. However, the Government equipment selected for comparison here is so similar and from such a wide territory that further discussion of incomparability is unwarranted. The argument that our rates should be based upon 25% above gross rates on Government equipment in the States instead of on net rate (gross rate minus value of subsistence and quarters allowances) has been forever settled, I hope, by the Governor's decision that it was not the intention of the law for employees to profit from allowances and the statement is merely repeated now as a reminder.

4. The two principal present bases for rates of pay now under consideration are governmental in part for suction dredges upon which several other pieces of equipment are based and commercial in part for towboats upon which supply boats and certain others are based. The Master of P. L. S. D. #86 is based upon the average of the net rates of pay for Masters of suction dredges at the U. S. Engineer Districts of Norfolk, Wilmington, N. C., Savannah, and Galveston, this average being increased by 25% and $30.00 per month added for subsistence. The subordinate positions of P. L. S. D. #86 have small differentials below Master which give rates considerably above the Canal equivalent of similar positions on Government suction dredges in the States. The following equipment is at present based upon the Master of P. L. S. D. #86:—Relay Barge, *Las Cruces*, Dipper Dredge, Floating Crane, Drill Boat, Hydraulic Grader, Sand and Gravel
85 Plant, and the two Barge Repair Stations. The Senior Master of towboats is based upon the average of 10 commercial rates and one governmental rate at the six ports of New York, Norfolk, New Orleans, Galveston, San Francisco, and Seattle, this average being increased by 25% and $30.00 per month added for subsistence. The subordinate positions on towboats are based upon Canal differentials instead of governmental or commercial differentials. The following equipment is at present based upon Senior Master of towboats: *La Valley*, *Faither*, *Siri*, Supply Boats, and *Favorite*. My recommendations propose to base all of above equipment, including motorboats, upon P. L. S. D. #86, which can be accurately based upon similar equipment in the Government service in the States.

5. There is one consideration in the wage structure on the Isthmus that has always received the most earnest attention of the Administration, and that is coordination. One of the most important bases of pay now in effect here is the U. S. Navy Yard. Craft rates here are based thereon and it is proper that all positions related thereto should be coordinated as far as practicable. This might mean an apparent conflict with the law as far as certain floating equipment is concerned, but as the number of positions involved in consideration of coordination is very small and the comparison with a craft rate very clear, it is believed that the rates may be considered as based upon States rates.

6. In recommending approval of establishment of the one base, P. L. S. D. #86, as at present obtained for Master, with differentials and rates for all other positions as shown on accompanying table, the following principal advantages are mentioned:

(a) The ease of securing reliable data from Governmental sources on which to base future adjustments as contrasted with

the difficulty of obtaining accurate data concerning the widely varying rates paid by private concerns where frequently the inclusion or exclusion of one or more of the higher or lower paid rates will materially affect the rates to be deduced for local employees;

(b) Having rates for employees on all Canal equipment determined from one base, which not only will greatly simplify our wage structure, but will insure that future increases and decreases will be made simultaneously for this considerable group of employees; and

(c) Continuity of employment and rates of pay for employees in the Government service are little influenced by changing business conditions and other economic disturbances that periodically affect employment and salaries in the commercial world. Reasonable assurance of steady employment, liberal vacation privileges, retirement, and other considerations aside from the
86 actual cash salary received, frequently make employment attractive under the Government even at rates of pay appreciably below the level prevailing in the commercial world. Consequently, to take the higher commercial rates as a base for the determination of local rates of pay, and then continue the perquisites that result from Government employment, results in a total remuneration in money and emoluments that cannot be justified by comparison either with Government or private wage schedules; and, is objectionable from another viewpoint in that it creates dissatisfaction among closely related employees who have their rates of pay determined from a Government base, where the perquisites and attractive features of employment under the Government have already been taken into consideration in fixing the rate.

7. The various pieces of equipment are discussed in the following paragraphs.

8. P. L. S. D. #86: Under the Panama Canal rules, the engineer of a Pipe Line Suction Dredge is required to hold a license, examination therefor requiring submission of satisfactory evidence that applicant has had certain experience or qualifications. Either one of two requirements of experience or one of qualification is satisfactory. The qualification that makes an applicant eligible is that of Journeyman Machinist and, while a lesser requirement would also comply with the regulations, it is believed to be fair and just to consider the highest qualification in determining the rate. The 26-day rate for Journeyman Machinist is $235.04, which with $30.00 added for subsistence in compliance with the Governor's circular would give a rate of $265.04, or, as I have called it for the purpose of determining a differential,

$266.00. This produces a differential of $50.00 below Master, while the present differential is $30.00 and the States differential, $109.90. Therefore, in the future, under my proposal, the engineer would be rated at $50.00 below Master and not based upon the craft rate which was merely used for determining the proper differential when considering coordination.

The next position to be considered is Chief Engineer, which based upon States rates would have a differential of $33.85 below Master. This, however, would bring the Engineer and Chief Engineer too close together in accordance with States practices. As Chief Engineer here has always received $25.00 per month more than Engineer and as the Chief Engineer in the States receives approximately $25.00 per month less than the Master, and as the second positions on most of the Government equipment are rated $25.00 below Master, I have recommended the Chief Engineer at $25.00 below Master. For Senior Engineer, I recommend the continuation of the present $15.00 differential below Chief Engineer, or $40.00 below Master.

87 In the present approved practice, on our dredges the Chief Operator succeeds the master instead of, as in the States, the Mate, which latter position is clearly out of step here. It is therefore not practicable, in my opinion, to base Chief Operator and Operator strictly upon States differentials, which are $109.03 and $116.66, respectively. Rating the Chief Operator on a parity with Chief Engineer and Operator with Senior Engineer, which conforms to organization practice long in effect here with apparently successful results, gives differentials of $25.00 and $40.00, respectively.

As previously stated, the Mate, if based strictly upon States rates, would have a differential of $86.46, but to enjoy that differential would require him to succeed to position of Master, which he is not qualified to do. Considering, therefore, the States differential and the duties here, the position of Mate at $85.00 below Master is eminently fair.

In the States there is but one position as Pipe Line Foreman, and in some cases these duties are performed by the Mate. The States differential is $127.09 below Master, which differential I have approximated for the second foreman. I have rated the top foreman at $20.00 below Mate in accordance with our past practice, second foreman $20.00 below top foreman, and third foreman $15.00 below second foreman, giving differentials of $105.00, $125.00, and $140.00, respectively.

The following positions are recommended to be abolished as they do not conform to States practice and because consideration of their duties has already been given in arriving at the recommended

differentials:—Master, dredge and relay; Chief Operator in charge of dredge and relay; and Chief Engineer in charge of dredge and relay.

9. Relay Barge: I have shown the rate for relay pumpman at the present rate of $247.00, which produces a differential of $69.00 below Master, P. L. S. D. It is not my intention to recommend, as I have shown, that the pumpman be permanently based upon this differential, but that he be continued on the present base of 5 cents under the hourly Steam Engineer rate for 28 days. This produces an automatic rate which because of the duties, nonsubsisted equipment, and exact comparability with the craft, should remain in effect as it is at present.

10. *Las Cruces:* I quote below the opinion that was approved by the Governor in establishing rates on the *Las Cruces:*

88

"Balboa Heights, C. Z.,
July 31, 1929.

"Opinion of Major Wheeler in Case of *Las Cruces*

"1. The primary consideration involved in this wage adjustment is comparability with government-owned equipment in the United States. In case it can be shown that the United States owns a dredge comparable to the *Las Cruces*, no other base should be considered by the Governor. Such is my opinion. However, it is realized that coordination is an important consideration and since it is my opinion that such consideration results in practically the same rates as are now derived from the comparison basis, my recommended rates may be considered as established upon both the bases of comparison and coordination.

"2. Comparison with Government-owned equipment in U. S.

"(a) The *Raymond* and our *Las Cruces* are diesel engine-driven dredges whose auxiliaries are, with minor exceptions, generally similar, thus leaving their main equipment for comparison on the basis of total capacity.

The *Las Cruces* has a large motor-driven pump which obtains its power from a combination of 3 or 4 911 H. P. diesel engines. Normal dredging requires 3 engines for this service, with the fourth engine shut down in reserve. Four engines are required for high pressure pumping.

The *Raymond* has its pump driven directly by a 1,000 H. P. diesel engine, which suffices for the low pressure work. The high pressure dredging is performed by boosting the discharge from the main pump with booster pumps supplied with power from a 1,000 KVA. motor generator set which reserves its power from two 800 H. P. diesel engine driven generators. In addition to booster pump operation, these two 800 H. P. units supply the

power for auxiliaries and are called "auxiliaries" in the Washington official correspondence, although they are really main units used for pumping, just as are the main units of the *Las Cruces*.

The comparison becomes 3,600 H. P. for the *Las Cruces* against 2,600 H. P. for the *Raymond*, with, in my opinion, no difference in the responsibility of operation. In fact, the supply of high voltage alternating current by the *Raymond* involving, as it does, additional care and responsibility in operation with the booster barge, more than compensates for the difference in horse power. Then, too, if horse power is an important item for comparison, the greater horse power of 12,000 at Miraflores should be considered.

89 "I am convinced that if the *Raymond* were owned by The Panama Canal, the *Las Cruces* and the *Raymond* would be coordinated on a parity.

The *C. B. Harris*, however, is not so comparable with the *Raymond*, although its rates of pay are higher.

The average of the Master's and Chief Engineer's rate of these two United States dredges is $327.00 and $316.00, respectively.

"(b) On both government and commercial dredges in the States, the subordinate positions are lower than corresponding positions on Dredge No. 86. However, this fact was previously noted in establishment of rates for the lower positions on Dredge No. 86 and as the differentials were not increased, it is believed proper that the rates on the *Las Cruces* should conform thereto."

The rate for Master established at that time, $329.00, conformed closely to the Canal equivalent of the States rate, $327.00, and also maintained, in my opinion, proper coordination in the Dredging Division. The subordinate rates, however, were too high and are recommended for change as shown in the table attached, both to conform to States rates and to maintain coordination.

On the States base, Chief Engineer would receive $316.00 here, but it is believed that the establishment of a $25.00 differential below Master for the second positions, Chief Operator and Chief Engineer, is of primary importance for purposes of coordination, as explained above for suction dredges. The difference in organization over States practice mentioned for suction dredges applies also to diesel dredges and hence Chief Operator is carried at $25.00 below Master while Mate is given a differential of $105.00 in order to place him on a parity with Mate of Suction Dredge, at $231.00.

The positions of Operator, Senior Engineer, Engineer, and the three foremen are given differentials that produce rates which place them on a parity with similar positions on suction dredges. This parity was approved in the original establishment of the

rates on the *Las Cruces* and it will be seen by comparison with States rates is justified. It should be noted that since the establishment of the *Las Cruces* rates, there was a $7.00 increase on P. L. S. D. which was applied, of course, to the *Las Cruces*.

The position of Electrician was placed on a parity with that of Engineer and it is my opinion that with proposed reduction in rate of Engineer to $266.00, this coordination is still proper from consideration of duties. Nevertheless, I recognize that based upon the craft rate, with $30.00 added for subsistence, the Electrician would receive the same rate, approximately, as Senior Engineer, or $276.00.

90 For the same reason as explained for suction dredge, it is recommended that the position of Chief Operator, Acting Master, be abolished.

Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 of memorandum omitted.

91 Copied—phb.

BALBOA HEIGHTS, C. Z.,
October 29, 1930.

MEMORANDUM

1. The increases in pay allowed for any position on pipe line suction dredges when operating with a relay or when the master is absent are hereby discontinued, effective December 1, 1930.

2. Major Wheeler's schedule will be used hereafter as a guide in adjustments of pay on the floating craft of the Marine and Dredging Divisions, unless in the meantime positions can be used on craft operated by the United States Government.

3. No rates of pay will be reduced, except as indicated in paragraph 1 above, but when basic rates are adjusted upward other positions will not move upward accordingly, unless Major Wheeler's schedule shows an increase is due. When the basic rates are lowered by any stated amount all positions will move downward the same amount.

4. Thus there will be a gradual approach toward the differentials recommended by Major Wheeler, but no changes in rates, except as indicated in paragraph 1, will be made either for men now in service or for new men taken on or promoted. Furthermore, the differentials recommended by Major Wheeler are to be considered as tentatively adopted, and if any specific inconsistencies are found in his schedule the matter may be taken up by a separate letter concerning any one or more positions.

(Signed) H. BURGESS,
H. Burgess,
Governor.

HB/P.

92 Copied—phb.

BALBOA HEIGHTS, C. Z.,
October 31, 1930.

Memorandum for Marine Superintendent, Superintendent of Dredging

RATES OF PAY—POSITIONS ON FLOATING CRAFT

1. The following memorandum from the Governor is quoted for your information and guidance:

"BALBOA HEIGHTS, C. Z.,
October 29, 1930.

"MEMORANDUM

"1. The increases in pay allowed for any position on pipe line suction dredges when operating with a relay or when the master is absent are hereby discontinued, effective December 1, 1930.

"2. Major Wheeler's schedule will be used hereafter as a guide in adjustments of pay on the floating craft of the Marine and Dredging Divisions, unless in the meantime positions can be based on craft operated by the United States Government.

"3. No rates of pay will be reduced (except as indicated in paragraph 1 above) but when basic rates are adjusted upward other positions will not move upward accordingly, unless Major Wheeler's schedule shows an increase is due. When the basic rates are lowered by any stated amount all positions will move downward the same amount.

"4. Thus there will be a gradual approach toward the differentials recommended by Major Wheeler, but no changes in rates (except as indicated in paragraph 1) will be made either for men now in service or for new men taken on or promoted. Furthermore, the differentials recommended by Major Wheeler are to be considered as tentatively adopted, and if any specific inconsistencies are found in his schedule the matter may be taken up by a separate letter concerning any one or more positions."

H. BURGESS, *Governor.*

(9478–1)

93 2. In conformity with the foregoing, until approval otherwise is authorized, rates of pay (except as specifically stated to the contrary) of all positions on the following floating equipment, and rates of pay for certain shore positions coordinated with floating equipment positions, shall be based on one controlling rate in the Dredging Division—and that is the rate for master of pipe-line suction dredge, which rate in turn shall be based upon rates paid on plant operated by the Engineer Corps, U. S. Army, in the United States, derived in accordance with the method of computation heretofore approved.

(a) Pipe line suction dredges—all positions.

(b) Relay barge—rate for relay pumpmen to be based on 5¢ under the hourly steam engineer rate, computed on a 224-hour monthly base. Rates for relay pumpmen will change automatically with any change in basic hourly rate.

(c) Dipper dredges—all positions.

(d) Floating cranes—all positions.

(e) Drill boats—all positions except blacksmith; rate for blacksmith will be derived by adding a $10.00 differential to the monthly equivalent of the 26-day hourly rate for blacksmith, heavy fire, Navy Yard base.

(f) Hydraulic grader—all positions, including pumpmen.

(g) Towboats—all positions.

(h) Craneboat *La Valley*—all positions except steam engineer; rate for steam engineer will be derived by adding a $20 differential to the monthly equivalent of the 26-day first-class rate for steam engineer, Navy Yard base.

(i) Ferry tug *Gaither* and launch *Siri*—all positions.

(j) Motorboats—rates for operator, motorboat, coxswain-engineer, and boatswain, heretofore have been determined administratively; present rates are continued but hereafter rates will be definitely tied to rate for master of suction dredge.

(k) Supply boats—all positions.

(l) Salvage tug *Favorite*—all positions, including radio operator.

(m) Gravel plant—foreman in charge.

(n) Barge repair station, Gamboa—foreman in charge.

(o) Barge repair station, Balboa—foreman in charge.

3. The schedule of differentials proposed by Major Wheeler and approved tentatively by the Governor is not reproduced in full in this memorandum due in part to the burden of typing and in part to the fact that the pay of none of the employees con-
94 cerned is affected at this time(except as indicated in paragraph 1 of Governor Burgess' memorandum), nor will be affected until such time as adjustments are made in the rate for master, pipe-line suction dredge, in conformity with changes in basic rates in the United States. The following tabulation, however, shows the proposed coordination in rates of pay for the greater portion of the various floating equipment positions and the relation between the master's rate on each piece of equipment to the rate for master, pipe-line suction dredge:

Equipment	Rate of pay for—							Master's differential with respect to rate for Master, P. L. S. D.	Change
	Master	Chief Engr.	Engr.	Chief Opr.	Opr.	Mate	Foreman		
Motorboats	$188							−$128	
Launch *Siri*	256							−60	−$5
Ferry tug *Caither*	261		$251					−55	−5
Supply Boats	261		236					−55	−5
Hydraulic Grader	296					$271	$211	−20	−10
Drill Boats	306		266			281		−10	
PLSD #86	316	$291	266	$291	$276	271	211		
Towboats	316	291						+10	−5
Floating Cranes	326	301	266	301				+10	−4
Craneboat *La Valley*	326	301						+20	
Dredge *Las Cruces*	336	311	266	311	276	231	211	+20	−20
Dipper Dredge	336	311	266	311		241		+20	−41
Salvage tug *Favorite*	336	311	266			265			

4. Dredging and Marine Division employees affected who are desirous of ascertaining changes in differentials which have been tentatively approved may obtain this information from any of the following sources:

Marine Superintendent
Superintendent, Dredging Division
Bureau of Statistics, Executive Dept.
Labor Member, Wage Board

5. File reference: 2–D–61/S; memorandum of Major Wheeler, March 25, 1930, with accompanying tabulation; and various memoranda attached thereto.

(Signed) C. A. McIlvaine,
C. A. McIlvaine,
Executive Secretary.

CC—Dredging Division (6)
Marine Division (4)
Personnel Bureau (2)
Bur. Statistics (2)
Accounting Dept. (2)
Supv. Rollkeeper (1)
Mr. McConaughey (10)
Washington Office (2)
Files.

95 *Exhibit D to stipulation*

THE PANAMA CANAL

CANAL ZONE

Executive Department

UNITED STATES OF AMERICA,
Canal Zone, ss:

I, F. H. Wang, Executive Secretary of The Panama Canal, do hereby certify that I am the custodian of the official records and documents of The Panama Canal, and that the excerpts appearing on the document hereto attached are true and correct copies of the Panama Canal Personnel Regulations which are on file in the Executive Office of The Panama Canal.

In witness whereof I have hereunto set my hand and affixed the Seal of the Government of the Canal Zone this 5th day of March 1941.

F. H. WANG.
F. H. Wang,
Executive Secretary.

96 *Excerpts from Panama Canal personnel regulations*

Issued by Governor, The Panama Canal, March 1, 1928

43.1. Hours of service.—Office hours and hours of labor will be fixed by the Governor within the limits prescribed by law. Variations in hours of work must depend on the exigencies of the service, but as far as possible, these hours must be regular and not subject to change from time to time arbitrarily at the discretion of officials and employees in supervisory capacities.

* * * * *

43.5. Monthly employees.—Employees whose salaries are fixed on a monthly or annual basis will be employed ordinarily 7 hours a day if regularly engaged in office work and 8 hours a day if engaged on outside, maintenance, construction, or shop work, but they will receive no pay for overtime work.

* * * * *

48.2. Recuperative time for monthly employees working irregular hours.—In case a monthly employee, regularly employed in the daytime, works at night, he may be allowed time off the following day if needed for rest or recuperation without having the time charged against his leave.

48.3. Relief time for Sunday and holiday work.—A monthly employee who works regularly and is required to work on a Sunday or holiday may be granted relief time for such service by the head of his department or division when it is practicable to do so without detriment to the work or incurring additional expense, but the granting of such time is not a vested right. When such time is allowed to an employee whose rate of pay is computed on a 28-day month, it shall be granted on a basis of 28 days service each month except that during the month of February he may be granted two days off. This does not apply to employees engaged on certain classes of work for which special rules for allowing relief time have been approved by the Governor.

48.4. Relief time not cumulative.—Relief time is not cumulative and must be taken as far as possible in the month in which it is earned, or otherwise before the end of the month immediately following. Relief days are for the purpose of breaking long periods of duty and should be granted in such a way as to enable the employee concerned to have a day off about twice a month.

48.5. Sunday, holiday, and overtime work to be avoided.—Department heads should endeavor to avoid any need arising for Sunday or holiday work, as well as overtime, particularly in the case of monthly employees whose pay is not fixed on the basis of regular employment on such days.

48.6. Anticipating relief from continuous service.—When, due to an emergency or other unusual circumstances, continuous duty is required and it is anticipated that no relief time can be granted within a period of 2 months, the situation should be reported to the Executive Office, with the recommendation of the head of the department as to temporary employments to relieve the situation or allowing at a later time such relief days as will be earned during the period.

U. S. GOVERNMENT PRINTING OFFICE: 1944

Supreme Court of the United States

Order allowing certiorari

Filed October 9, 1944

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.